Abstract
When Romania’s accession process to the European Union entered its decisive phase in the middle of the 2000s, the fight against political, especially governmental corruption began to dominate the political discourse in this country. However, while a whole series of criminal investigations have been conducted since then, until today no single former or current (prime) minister has been convicted of a corruption crime by the court of final appeal. From 2006 till 2009 the country was instead confronted with a constitutional conflict, in which the vast majority of the political elite continuously fought for being prevented from prosecution and conviction. Although the prosecution of corruption crimes seems to yield its first irreversible successes now, the extent of governmental corruption steadily remains high and many politicians steadily react against the enforcement of the law.

This paper focuses on the interplay of governmental corruption, constitutional and legal rules and the anticorruption discourse in Romania. In particular, the following line of argument will be presented: The post-socialist political elite in Romania quite naturally use governmental offices for personal purposes against the public good. Therefore, they are not interested in a successful fight against corruption. Instead, corruption is predominantly (mis-)used as a rhetorical and judicial means in political struggles. In contrast, a few political and legal actors can be identified as honestly viewing corruption as a problem to be solved. Thanks to them and the continuous external pressure exerted by the European Union, but – above all – due to important improvements of the legal framework and the establishment well functioning, rule-of-law-oriented prosecution offices, the fight against governmental corruption currently faces its decisive phase.
1 Introduction

On January 30, 2012, the former Romanian Prime Minister Adrian Năstase was sentenced by the High Court of Cassation and Justice (Înalta Curte de Casație și Justiție – ICCJ) in a procedure at first instance to two years in prison. The Romanian supreme court additionally banned him from running for a public office or parliamentary seat for the same period. Năstase was found guilty of having illegally funded his presidential election campaign in 2004. Using his position as head of government he illegally collected about 1.6 million Euro from several companies by officially declaring their payments as attendance fees for a governmental symposium. Apart from this most spectacular case of governmental corruption which even captured broad international media attention,¹ the past year came up as a real »season for corruption fighters« in Romania. During the last twelve months, the ICCJ has handed down seven verdicts in corruption cases on former members of government. Whereas in the only definitive verdict the former Labor Minister Paul Păcuraru was acquitted from a bribery charge, four other ex-ministers were sentenced in several first-instance criminal procedures to terms of imprisonment. Additionally, the aforementioned Adrian Năstase won an acquittal in a second corruption case.

These developments have brought the fight against governmental corruption as the key aspect of political corruption to a new level in Romania. For the first time since the end of socialism highest public office holders were successfully put on trial. The obviously vast extent of governmental corruption proves the relevance of these developments. The sheer amount of investigations may serve here as a approximate indicator: No less than 18 former or current ministers and prime ministers and 14 secretaries and undersecretaries of state were investigated by the prosecution offices during the last decade. Due to the external pressure exerted by the European Union (EU) in the context of Romania’s integration process as well as by virtue of the internal pressure put by several actors of the »civil society« and the mass media, the fight against corruption began to dominate the political discourse in Romania at the beginning of the new millennium.² Since then, a large number of laws and ordinances have been adopted or changed, transparency rules were introduced and new state institutions established. Above all, in 2002 the National Anticorruption Prosecution Office (Parchetul Național Anticorupție – PNA) was founded.³

The decisive phase, however, began with the change of government and the election of incumbent President Traian Băsescu in 2004. These main changes in the political landscape brought a number of actors at the helm of the justice ministry and the the prosecution office who did not only carried on shop window politics for the watchmen in Brussels but honestly started to fight corruption – even against politicians from the own ruling coalition. Until then, the efforts against corruption had been mainly «seen as a »transition tennis« in which the ball is being played between various institutions without touching the ground and getting to the roots of corruption.» Since 2005 the anticorruption institutions have intensified their work and – not least due to several important improvements of the legal framework – finally yield their first successes now. In this context, in 2006 the PNA was renamed National Anticorruption Directorate (Direcția Națională Anticorupție – DNA). Nevertheless, until today no single former or current (prime) minister has definitively been convicted. Instead, the vast majority of the Romanian political elite – a »coalition of the unwilling« – continuously fights by all available means for being prevented from prosecution and conviction.

The aim of this paper is to analyze these struggles on an efficient and effective fight against governmental corruption in Romania. The analysis is based on the observation that corruption is a widespread phenomenon in the Romanian society in general and the elites in particular. Particularly conspicuous in this context are the manifold phrases of everyday language like »atenţie«, »plocon«, »peşcheş« or »bacşiş«. As a consequence, the post-socialist political elite quite naturally use governmental offices for personal purposes against the public good and are not interested in a successful anticorruption policy. Hence, it is quite clear that informal factors like political culture, historical legacies, economic inequality, low levels of generalized trust and persistent patrimonial networks are primarily able to explain the continuing high level of corruption in Romania. Within this framework, however, I would like to stress the effects that formal factors have on the success
of the fight against corruption. This should not be misunderstood in the sense of a simplistic institutionalist approach, which argues that establishing adequate formal institutions will automatically lead to the desired results. But the configuration of formal rules and the momentum of formal institutions significantly influence the results of anticorruption efforts.

In the line of this argument, two such formal factors will be identified in Romania: First, a specific norm in the post-socialist constitution of 1991 facilitated a long-lasting constitutional conflict between the President, government, parliament, judiciary and the Constitutional Court. This conflict massively inhibited the investigation and prosecution of governmental corruption from 2006 till 2009. Art. 109, § 2 Const. states that »only the Chamber of Deputies, the Senate and the President of Romania have the right to demand legal proceedings to be taken against members of the Government for acts committed in the exercise of their office.« Following § 3, the details »shall be regulated by a law on ministerial responsibility«. Hence, the constitution protects the head of government and his ministers (but not lower-ranking public officials like secretaries or undersecretaries of state) more comprehensively than the members of parliament by their immunity. Admittedly, the deputies and senators »shall not be searched, detained or arrested without the consent of the Chamber they belong to« (Art. 72, § 2 Const.). But there is no obstacle to investigate, prosecute and even convict members of parliament.

Second, the anticorruption institutions have developed their own dynamics since 2005. This trend has been obviously protected by the enduring pressure exerted by the EU until Romania’s accession in 2007 and thereafter through the so-called post-accession »cooperation and verification mechanism« as well as personal decisions of incumbent President Traian Băsescu. However, these dynamics clearly follow the logic of the rule of law, i.e. investigating and prosecuting crimes without distinction of person and its political affiliation. This institutional autonomization is evidenced by the fact that the DNA intensively and successfully investigates corruption crimes committed by members of all political parties. Most recently it even predominantly works on members of the currently ruling coalition.

The following sections will analyze the struggles on an efficient and effective fight against governmental corruption in Romania. To start with, the constitutional conflict on the opportunities to file criminal cases, particularly corruption cases, against current or former members of government will be examined. In parallel, the evolvement of the anticorruption policy will be sur-

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8 »If, say, the criminal code of Atlanta, Georgia seems to work well, why not hire an Atlanta lawyer to write the code for Tbilisi, Georgia. Stranger things have happened.« Krygier, Martin: Institutional Optimism, Cultural Pessimism and the Rule of Law. In: Id./Czarnota, Adam W. (ed.): The Rule of Law after Communism. Problems and Prospects in East-Central Europe. Aldershot et al., p. 77–105, p. 81f.

veyed (2). Then, the developments in the fight against governmental corruption since 2009 and the achieved progress so far will be outlined. Additionally, it will be shown how politicians predominantly (mis-)use »corruption« as a judicial and rhetorical means in political struggles. In contrast, only a few actors are identified as honestly viewing corruption as a problem to be solved (3). Finally, the future prospects of governmental corruption and the fight against it will be assessed (4).

2 The Constitutional Conflict on the Fight Against Governmental Corruption

2.1 The Initial Situation: The Law on Ministerial Responsibility

In consequence of the aforementioned rule in Art. 109, § 2 Const. the members of the Romanian government are de facto situated in a legal vacuum. This holds true to at least the same extent that there are aligned majorities in both chambers of parliament, a President appointed by the ruling parties and a political culture that prevents politicians from passing requests from the procuracy to allow criminal prosecution against »their own kind«. In contrast to parliamentary immunity, there is no justification for such a protective norm. Parliamentary immunity can be legitimated as a protection of the legislative branch against potential encroachments committed by the executive. Governmental immunity, however, simply raises the »suspicion of a self-favoring by the political elite«, even if many well-established democracies have such rules. This is especially the case if, like in Romania, the prosecution offices are subordinated to the executive branch and therefore cannot be abused by the opposition. In contrast, this arrangement provokes both government and opposition to politically instrumentalize allegations of corruption against their adversaries.

It had been seven and a half years until in April 1999 the Law on Ministerial Responsibility (LMR) was finally resolved and came into force. In the following years it was repeatedly

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10 This paper is based on a profound study of all kinds of relevant documents (the constitution, laws, emergency ordinances, decrees, court decisions, parliamentary stenographic minutes, press releases, EU progress reports etc.) and a survey of the media coverage, including the newspapers Nine O’Clock (<http://www.nineoclock.ro>, English) and Allgemeine Deutsche Zeitung für Rumänien (<http://www.adz.ro>, German) as well as several online media, above all Punkto.ro (<http://www.punkto.ro>, German) and Hotnews.ro (<http://www.hotnews.ro>, Romanian and English). All developments up to and including February 2012 were taken into account.


12 Wuttke, Julia: Die Verantwortlichkeit von Regierungsmitgliedern in Deutschland und Frankreich, Köln, Berlin, München 2005, p. 205. All German and Romanian quotes are translated by the author.

amended.\textsuperscript{14} With this law the parliament even massively extended the constitutional provisions. On the one hand, the government itself manifold became part of the procedure. On the other hand, all former members of government were protected (Art. 20 LMR), even if there was no constitutional imperative to do so. But principally it is indisputable that there is no legal reasoning for such a protection (e.g. in the sense of safeguarding the ongoing governmental activity). At the time of the government change in 2004 the LMR contained the following important provisions:

- In case of crimes, which members of government had committed in the exercise of their duties, the authorized public prosecutor had to address a request for investigation and prosecution to the President or one of the two parliamentary chambers; the Chamber of Deputies and the Senate had to decide on the request by secret ballot (Art. 15 LMR).

- At the presidential office a special commission was established that had to review all requests addressed to the head of state. Its five members were nominated by the ministers of justice and interior. The president could decide on a request only after its processing by the commission. Requests against members of government who were currently also deputies or senators were additionally subject to approval by the respective chamber of parliament (Art. 16 LMR).

- Once a request was approved by the Chamber of Deputies, the Senate or the President it had to be passed on to the Minister of Justice (or, if appropriate, to the Prime Minister), who had to »process according to law« (Art. 18 LMR).

These extensive protective rules did not provoke a conflict before the change of government that followed the parliamentary and presidential elections in November/December 2004. The outgoing\textsuperscript{15} leader of the Democratic Party (\textit{Partidul Democrat} – PD) Traian Băsescu won the presidential race against the acting Prime Minister and chairman of the Social Democratic Party (\textit{Partidul Social Democrat} – PSD) Adrian Năstase by a slight margin. The PSD, which 2000–2004 had occasionally formed a coalition and 2004 even an electoral alliance with the Humanist Party (\textit{Partidul Umanist Român} – PUR) and had continuously been backed by the Democratic Union of Hungarians in Romania (\textit{Uniunea Democrată Maghiară din România} – UDMR), also lost its parliamentary majority. Four coalition partners formed the new government: The National Liberal Party (\textit{Partidul Naţional Liberal} – PNL) and the Democratic Party, which had cooperated in an electoral alliance, successfully separated the UDMR and the PUR from their cooperation with the Social Democrats. Together with the national minorities group in the Chamber of Deputies they were able to


\textsuperscript{15} According to Art. 84, § 1 Const. »the President of Romania may not be a member of any political party«.
form slight majorities in both chambers of parliament. The PNL chair Călin Popescu-Târiceanu became new Prime Minister.¹⁶

National Liberals and Democrats had first and foremost contested the elections with the objective to seriously fight the rampant corruption in Romania for the first time since 1990, in particular high-level political corruption. The new Justice Minister Monica Macovei became the protagonist of these efforts. The non-party former prosecutor got into government at the request of the Democratic Party and especially its former chairman Traian Băsescu as representative of the »civil society« in order to symbolize the political independence of the new legal policy. Until

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2004, Macovei had worked as chairman of the Romanian Helsinki Committee and as a lawyer at the European Court of Human Rights. However, the new government coalition already broke up in the spring of 2007. First, PNL and PD had been in the same boat with central actors of their previous political opponents who had until 2004 opposed all promising efforts for a successful anticorruption policy. This was particularly the case with the Humanist Party – in 2005 renamed in Conservative Party (Partidul Conservator – PC) –, which left the coalition already in December 2006 (see table). Second, a competitive situation had rapidly evolved between President Băsescu and Prime Minister Popescu-Tăriceanu and between PNL and PD, respectively. Their bitter altercations finally resulted in the breakup of the coalition and the PNL’s support of an unsuccessful impeachment against President Băsescu.

In the first months of 2005, however, all coalition partners supported the new Justice Minister’s reform efforts. One of these projects concerned the Law on Ministerial Responsibility. On 27 January 2005 the government modified the law by emergency ordinance and withdrew its legal force for former members of government. In the future, for them the general provisions of the Criminal Procedure Code should be applied (Art. 23, § 2f. LMR). This amendment was approved by both chambers of parliament with wide majorities until the end of March 2005. Thereby, Romania also fulfilled one of the key demands which were repeatedly imposed by the European Commission in its regular progress reports before the EU accession. Above all, however, the laws concerning the organization of the judiciary were substantially reformed. Whereas on the institutional level the judiciary had been largely autonomized by a reform carried out already in 2003/04, this had produced on the personal level »a unified separate corps« of another kind. 


18 Emergency Ordinance No. 3/2005. In: MO 116/2005. The numbering complies with the consolidated version of the LMR as published in: MO 200/2007. According to Art. 115, § 4ff. Const. the Romanian government has the right to adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed. These ordinances that come into force immediately have to be passed on to the Parliament, which can accept or amend them as laws or amendments or reject them. Since the mid-1990s, the government extensively uses this prerogative.


ti-reform lawyers dominating the tops of the third branch. Large parts of this judicial class were additionally only close to those politicians who tried to obstruct the fight against political corruption. In general, neither the socialist or social democratic governments (1990–1996 and 2000–2004) nor the center-right coalition (1996–2000) executed an effective anticorruption policy.

In this situation, Justice Minister Macovei pursued a two-pronged policy: 23 On the institutional level, the previously largely ineffective National Anticorruption Prosecution Office (PNA; since 2006: National Anticorruption Directorate – DNA) was reformed. For instance, the DNA’s jurisdiction was limited to highest public officials only (the members of government and parliament, the staff of the presidential administration, prefects, and judges of the constitutional court and the High Court of Cassation and Justice/ICCJ) and the amount of loss at which the DNA is in charge was massively increased massively. As a consequence, the Directorate became able to deploy its resources to the real »big« corruption cases. On the personal level, a rule was reintroduced that the leading prosecutors could be appointed and dismissed by a joint decision of the Justice Minister and the President, i.e. without the approval of the judiciary’s self-administration organ, the Superior Council of Magistracy (Consiliul Superior al Magistraturii – CSM). Thus, Monica Macovei was able to install two really rule-of-law-oriented prosecutors at the top of the DNA (Daniel Morar, since August 2005) and as Prosecutor General attached to the ICCJ (Laura Codruţa Kövesi, since October 2006). Using the improved legal framework, they transformed the prosecution offices into effective law enforcement agencies which for the first time also started to intensively investigate corruption at the highest political level. 24

2.2 The Năstase Affair and the Constitutional Court’s first LMR Decision
The various corruption scandals around Adrian Năstase, Prime Minister (2000–2004), President of the Chamber of Deputies (since 2004) and head of the Social Democratic Party (since 2000), had seethed since 1999. In the years to follow he faced one serious criminal accusation after the other. The first one was related to a dubious inheritance of about 400,000 Euro, which Năstase’s wife Dana Năstase claimed to have inherited from an aunt named Tamara Cernasov. »Aunt Tamara« had allegedly earned her money with real estate speculation during the early years of economic transition after 1989 and invested it primarily in art objects and jewelry. However, the old woman who died at 91 had spent her remaining years in an ordinary squalid block of flats. Dana Năstase was not able to present a conclusive evidence of ownership for the 400,000 Euro. Additionally, the Romanian Office against Money Laundering routinely took notice when she deposited the money on her bank account in 1999. Subsequently, so reads the claim of the DNA

23 For the details see Hein, op. cit., pp. 350ff.
24 Among others, the prosecutors also resumed older files that had been closed for unclear reasons.
prosecutors, Adrian Năstase convinced Ioan Melinescu, the Anti-Money Laundering Office’s employee who dealt with this case, to steal the relevant file. In return, after becoming head of government in 2000, Năstase returned this favor by appointing Melinescu head of this office.

A second complaint referred to a purchase of land at Zambaccian street No. 1 in the center of the Romanian capital Bucharest in 1998. Adrian Năstase paid the unusually low price of about 11,000 Euro to a fellow party member (who had subsequently been imprisoned for corruption crimes) although the real value of the property was estimated at 25 times. Additionally, Năstase was accused of receiving undue benefits from 2002 till 2004 from Irina Jianu, at that time head of the State Inspectorate for Constructions, and Ioan Păun, at that time Romanian Consul in China. In order to being held in their offices, Jianu and Păun provided the Prime Minister with building materials and luxury furnishing worth about 550,000 Euro for his house. Third, as already mentioned at the outset of this paper, Năstase was charged with illegally funding his presidential election campaign in 2004. More precisely, the aforementioned State Inspectorate for Constructions headed by Irina Jianu organized a symposium called the »Quality Trophy in Constructions«. Via the official attendance fees for this event, the Prime Minister collected more than one million Euro from several companies and used this money for instance to print election posters.

All in all, the three cases triggered more and more public and intra-party pressure and finally forced Năstase on 15 March 2006 to resign from all his parliamentary and party offices except for his deputy seat. In November 2006 the National Anticorruption Directorate indicted Năstase in parts of the »Zambaccian I« and the »Quality Trophy« cases.

This was the starting point of the constitutional conflict on the opportunities to fight governmental corruption. In the course of the criminal proceedings Năstase requested a concrete review before the Constitutional Court against the aforementioned amendment of the Law on Ministerial Responsibility, which excluded former members of government from the scope of this law. In its first LMR decision of 5 July 2007, the Constitutional Court interpreted Art. 109 Const. as undoubtedly referring exclusively to acting (prime) ministers. This clearly results from the very constitutional terminology that refers to »members of the Government« and not previous incumbents. Nevertheless, Art. 23, § 2f. LMR was rejected as unconstitutional. Excluding

»former Members of Government […] from the special derogatory procedure provided for Members of Government, according to a random criterion, established according to the moment of initiation of the procedure, during the mandate or after cessation thereof,«

25 According to Art. 29, § 2 of the Law No. 47/1992 on the Organization and Functioning of the Constitutional Court (Lege privind organizarea si functiunea Curții Constituționale). In: MO 101/1992; republished with amendments in: MO 643/2004, a concrete judicial review may not only be initiated by the judges of any court but has obligatory to be initiated if any of the parties to a dispute requests it. Additionally, »[d]uring the period in which the exception of unconstitutionality is being examined, proceedings in the case pending before the Instance shall be suspended« (Art. 29, § 5).
was seen as contrary to the principle of equality before the law (Art. 16, § 1 Const.).\textsuperscript{26} Understandably, this self-contradictory argumentation met criticism by legal scholars:

> From a legal point of view it is all but evident why the Constitutional Court, on the one hand, explicitly states that the protection of Article 109 refers only to acting ministers, thus conceding that their situation fundamentally differs from that of former ministers, but, on the other hand, establishes a violation of the principle of equality [before the law, M.H.].\textsuperscript{27}

If anything, the Constitutional Court could have ascertained a contradiction within the constitution, i.e. between articles 16 and 109. On this basis the court could have given the principle of equality before the law priority to the regulations of ministerial responsibility. Obviously, the court did not want to go so far. With a less than convincing interpretation of the constitution it instead turned all former members of government back under the LMR’s protection umbrella. This decision was not undisputed even within the court: In the absences of two colleagues, the remaining seven judges decided with a six-to-one majority.

As a consequence, the criminal proceedings against Adrian Năstase became obsolete since the investigations of the DNA had now unconstitutionally been initiated. Năstase, however, was at that time by far not the only former or current member of government who was investigated by the DNA or the Directorate for Investigating Organized Crime and Terrorism (Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism – DIICOT):\textsuperscript{28}

- The former Minister of Public Works and Transport Miron Mitrea (in office 2000–2004, PSD member) was accused of accepting bribes for the awarding of road construction contracts, of inciting the forgery of official documents and of using these documents.\textsuperscript{29}
- Ex-Minister of Economy and Commerce Ioan-Codruț Şereș (2004–2006, PUR/PC) was investigated on suspicion of divulging industrial secrets related to two major privatization projects.
- Ex-Minister of Defense Victor Babiuc (1996–2000, PD, temporarily PNL) was charged with the abuse of office and accepting bribes. This referred particularly to a non-transparent exchange of land of the Ministry of Defense with the dubious businessman George »Gigi« Becali in 1999. For a relatively cheap plot of land of 21 hectares in a minor village near Bucharest Becali obtained an area of the same size in a mushrooming residential area in the capital, where in the subsequent years numerous office buildings, luxury hotels and residences


\textsuperscript{28} Both directorates are subordinated to the Prosecutor General attached to the ICCJ.

\textsuperscript{29} By the way, it was the aforementioned head of the State Inspectorate for Constructions Irina Jianu who was accused of having bribed Mitrea in exchange for appointing her into her office and maintaining her there.
emerged. Becali’s new property is nowadays valued at 200 million Euro. Becali, who subsequently joined politics with his own xenophobic New Generation Party – Christian Democratic (Partidul Noulă Generație – Creștin și Democrat – PNG-CD) and was elected to the European Parliament in June 2009, built his wealth on this transaction. He is today one of the wealthiest Romanians and owns e.g. the country’s most successful soccer club Steaua Bucharest – that is, irony of history, the former club of the Romanian army.

Current Minister of Labor, Family, and Social Solidarity Paul Păcuraru (2007/08, PNL) was investigated on suspicion of accepting bribes for the awarding of government contracts in favor of a family member.

Ex-Minister for the Coordination of the Government’s General Secretariat Petru Șerban Mihăilescu (2000–2003, at that time PSD, since 2010 National Union for the Progress of Romania/Uniunea Națională pentru Progresul României – UNPR) was charged with accepting bribes for not dismissing his personal adviser Fânel Păvâlache, and of violating the weapons legislation. Mihăilescu – also known as »Miki Ţpagă« (»Micky Bribe«) – had illegally received nine hunting rifles worth about 7,000 Euro from Păvâlache and kept them in his possession without holding the legally-required permit.

The former Agriculture Minister Ioan Avram Mureșan (1997–2000, Christian-Democratic National Peasants’ Party/Partidul Național Țărănesc Creștin Democrat – PNȚCD) was accused of the embezzlement of a loan from the United States Agency for International Development (USAID) amounting to 1.2 million US Dollars and of 5,000 tonnes of cooking oil from the national reserve.

Current Minister of Agriculture Decebal Traian Remeș (2007, PNL) was charged with accepting bribes for the awarding of government contracts to a businessman. The DNA investigators filmed him during the handover of 15,000 Euro and his wife while receiving some bribe in kind: sausages and spirits. Additionally, Remeș was offered a new car worth EUR 65,000. His pre-predecessor Ioan Avram Mureșan acted as intermediary in that so called »Black-Puddings« case. Immediately after the television had broadcasted the video tape, Remeș resigned from office.

The successor of Monica Macovei as Justice Minister Tudor Chiuariu (2007, PNL) was accused of abuse of office in connection with the privatization of a plot of land owned by the Romanian Post.

Likewise, current Minister for Communications and Information Technology Zsólt Nagy (2004–2007, UDMR) was investigated in this case as well as in a corruption and espionage scandal: He was believed to have supported an international criminal group and divulged state secrets. Nagy was suspended from office on 11 June 2007.

Finally, the former Minister of Industry, Economy and Commerce Dan Ioan Popescu (2000–2004, at that time PSD, since 2004 PUR/PC) was together with his wife charged with being not able to document the legal gaining of parts of their wealth. Concretely, they could not provide an adequate justification for about 950,000 Euro.\footnote{According to Law No. 115/1996 on Statement and Auditing of the Property of Dignitaries, Magistrates, Civil Servants and Persons with Leading Positions. In: MO 263/1996, these categories of public officials had to declare their assets and those from their close relatives. In case of unjustified wealth, the assets in question could be confiscated by a court decision. Additionally, the person concerned could be dismissed or revoked from the position held and convicted of the crime of making a false declaration. Even if with this law in 1996 an anticorruption policy had begun in Romania, the law »was more directed to support rhetoric than to make public officials more accountable« and it simply did »not work[ ] with any consistency since it was adopted.« Jorge, Guillermo: The Romanian Legal Framework On Illicit Enrichment. [Bucharest] 2007, pp. 11 and 4. In fact, the Popescu case was one of the first instances that this regulation produced a visible effect.}

On the one hand, this list provided an alarming insight into the extensive level of corruption at the top of Romanian politics – all the more when one considers that it included only suspects among former and current (prime) ministers, i.e. leaving out lower-ranking public officials like secretaries or undersecretaries of state as well as members of parliament. On the other hand, it showed that in 2006/07 for the first time since 1989 high-ranking politicians from all political camps were in the focus of systematic anticorruption investigations.

2.3 The »Anticorruption Policy« of the PNL-UDMR Minority Government and the second LMR Judgment

As a consequence of the Constitutional Court’s first LMR decision, nine out of these eleven investigations and indictments became obsolete.\footnote{Shortly after Adrian Năstase, Petru Şerban Mihăilescu also requested a concrete review before the Constitutional Court against the Law on Ministerial Responsibility. His lawsuit was formally decided on 16 October 2007, although the first LMR decision de facto already had resolved his case. See Constitutional Court Decision No. 901/2007. In: MO 750/2007.} Only the Mureşan and Popescu cases were able to be continued.\footnote{In the proceedings against Ioan Avram Mureşan, the Romanian President Ion Iliescu (PSD) had requested the investigation and prosecution already on 18 August 2003, i.e. before the LMR was amended. The investigations against Dan Ioan Popescu did not fall within the scope of the LMR, because they did not directly deal with a crime which Popescu was charged with having committed in the exercise of his ministerial duties. However, there is every likelihood that the unjustified wealth bears upon his work as minister and therefore this paper also takes account of his case.} In the period that followed it became clear that Adrian Năstase’s complaint
was all but an singular instance. Instead, it became more than obvious that owing to selfish motives large parts of the Romanian political elite were not interested in a successful anticorruption policy. Therefore, PSD, UDMR, PC and increasingly also the PNL repeatedly accused the prosecution offices of pursuing political interests of the PD and of President Traian Băsescu. This accusations, however, could not convince due to two reasons: First, the Anticorruption Directorate definitely investigated members of the Democratic Party, too, as the example of Victor Babiuc shows. Second, the prosecutors would simply have failed with legally unfounded accusations in court, because since the 2004 reform of the judiciary the judges were no longer *de facto* controlled by the executive branch as it has been until then.

Furthermore, since April 2007 Romania was governed by a PNL-UDMR minority government supported by the PSD and temporarily also by the PC. At the latest since the breakup of the PNL-PD alliance in early 2007, the relationship between President Băsescu and Prime Minister Popescu-Tăriceanu was characterized by deep mutual suspicion and habitual mutual attacks – not least about the issue of political corruption. Over and above that, already since mid-2005 PD’s then coalition partners PNL and UDMR had less and less supported Justice Minister Monica Macovei’s anticorruption policy and the related structural reforms of the judiciary. This behavior was reinforced after Romania’s accession to the European Union on 1 January 2007. Since then the European Commission did note have such serious sanction measures against the new member at its disposal like in the pre-accession phase. Finally, two current ministers were on the above-mentioned prosecutors’ list: Tudor Chiuariu and Paul Păcuraru.

Immediately upon takeover the new government started to weaken the DNA and to inhibit the fight against governmental corruption. First, the new Justice Minister Chiuariu several times tried to replace the leading prosecutors of the Anticorruption Directorate with flimsy justifications. He failed, however, at the veto of the CSM and President Băsescu. Second, on 4 October 2007 the government amended the Law on Ministerial Responsibility by emergency ordinance. According to the new version of Art. 16 LMR, the commission at the presidential office that had to review all prosecutors’ requests for investigations from then on consisted of five judges elected by the CSM. The proponents of this amendment stated that the recomposed commission could

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34 After the breakup of the alliance with the PD Prime Minister Călin Popescu-Tăriceanu stayed in office, because the other four parties could not enforce a new head of government against the will of President Băsescu. On the contrary, they would have risked a dissolution of parliament (see Articles 89 and 103 Const.). However, the PSD as largest party in parliament did not want to officially join the government without nominating the Prime Minister.


36 See in more detail Hein, op. cit., p. 365.

37 See Hein, op. cit., p. 368.

objectively examine the investigation files. However, this seemed to be implausible: Why should judges conduct the preliminary examination of prosecutor’s investigations?

President Băsescu taxed Justice Minister Chiuariu with having written this emergency ordinance in order to obstruct the fight against corruption because of selfish motives. The Romanian lawyers’ associations also protested against the amendment as incompatible with the independence of judges and called their members for a boycott of the new commission. Asked by these associations, the People’s Advocate (i.e. parliamentary ombudsman) Ioan Muraru filed an abstract review before the Constitutional Court. Muraru not only objected against the emergency ordinance, but also against Articles 12–24 LMR that regulate the whole procedure for demands for prosecution of members of government. The ordinance was primarily criticized as lacking reasons for its emergency status (which are obligatory according to Art. 115, § 4 Const.) and as an encroachment on constitutional powers of the President. The mentioned entire LMR section was considered unconstitutional, because it regulated the President’s and parliament’s procedure for demands for prosecution although Art. 109, § 3 Const. envisages the LMR merely to regulate the cases of liability, and penalties applicable to members of the Government.

With its second LMR judgment delivered on 25 November 2007 the Constitutional Court complied with substantial parts of Muraru’s claims. It suspended the entire emergency ordinance as well as the old version of Art. 16 LMR as unconstitutional. The court ruled that the President’s and parliament’s powers according to Art. 109, § 2 Const. could definitely not be constrained by subconstitutional norms. Therefore, not only the reorganization of the presidential commission was held unconstitutional, but the establishment of such a commission at all (as through the old Art. 16 LMR). In contrast, the court preserved the general possibility to regulate the procedure for demands for prosecution of members of government by the LMR.

2.4 Continuing Obstructionism

As a result of this ruling, President Băsescu was now able to decide alone on eight demands for prosecution by the DNA. Băsescu approved all of them on 16 January 2008. Justice Minister Tudor Chiuariu had recently resigned after only nine months in office because of the allegations of corruption leveled against him. The Ministry was subsequently temporarily headed by Defense Minister Teodor Meleşcanu (PNL), before at the end of February 2008 the former commercial and corporate governance lawyer Cătălin Predoiu (PNL) was appointed new Justice Minister. However, the government together with the Social Democratic and the Conservative Parties con-

40 Concerning Adrian Năstase the DNA referred to parts of the »Zambaccian I« case only. The Petru Șerban Mihailescu case was not sent to the President at that point.
continued to struggle for a protection of their suspected politicians. First, interim Justice Minister Meleşcanu refused to forward the requests of the President to the DNA. Referring to Art. 18 LMR, according to which he had to »process according to law«, he demanded the complete investigation files. In response to this, Traian Băsescu accused the acting Minister of abusing his office by inhibiting the law enforcement. Even the European Commission felt obliged to call on Meleşcanu to pass on the President’s approvals to the prosecutors. Thereupon, the acting Minister gave up his resistance and forwarded on 22 January 2008 the approvals to the DNA.

Second, PNL, PSD, UDMR and PC resorted to a new loophole in the Law on Ministerial responsibility. The cassation of Art. 16 LMR by the Constitutional Court had also removed the provision, according to which a demand for criminal prosecution of a member of government who is likewise a deputy or senator could not be solely approved by the President, but had to obtain the additional approval by the respective chamber of parliament. This caused the question whether according to the new legal situation each of the three state organs – Chamber of Deputies, Senate and President – was allowed to decide requests by the prosecution offices independently, or the three institutions were able to block each other. Namely the Presidents of the Chamber of Deputies, Bogdan Olteanu (PNL), and the Senate, Nicolae Văcăroiu (PSD), argued in favor of a mandatory parliamentary approval. Consequently, they brought an organ controversy against the presidential approvals before the Constitutional Court in order to stop at least the investigations and prosecutions against their fellow deputies and senators Adrian Năstase, Miron Mitrea, Ioan-Codruț Şereș and Paul Păcuraru.

Thus, on 10 March 2008 the court delivered its third LMR decision. The constitutional judges interpreted Art. 109, § 2 Const. as ascribing all mentioned state organs an independent right for demanding the prosecution of (former) members of government, i.e. they excluded the opportunity of mutual blockade. In order to prevent such blockades the court separated the competences of the three institutions: The parliamentary chambers were declared responsible for those politicians who hold a parliamentary seat at the time of the prosecutors’ request. The President was analogously declared responsible for all the other suspects.41 As a result, the investigation requests against Zsolt Nagy, Victor Babicu, Decebal Traian Remes and Tudor Chiuariu could finally passed on to the DNA. For the aforementioned four members of parliament, however, there were now additional parliamentary votes necessary.

Third, however, yet still on the day of pronouncement of this Constitutional Court judgment the Chamber of Deputies inserted into a bill by which initially only Art. 23, § 2f. LMR was

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redrafted also a new version of Art. 16 LMR.\textsuperscript{42} It stated that in case of a presidential request to investigate or prosecute a (former) member of government, who is also a deputy or senator, the Minister of Justice was obliged to obtain the consent of the respective parliamentary chamber. Only the right-wing extremist Greater Romania Party (Partidul România Mare – PRM) and the successor of the Democratic Party, the Democratic-Liberal Party (Partidul Democrat-Liberal – PD-L) opposed this new legislative stroke. The PD-L had originated in late 2007 as merger of the PD and a breakaway fraction of the National Liberals, which had left the PNL in the context of the breakup of the PNL-PD alliance. The new Art. 23, § 2f. LMR, however, voted in on 10 March 2008, obviously contradicted the simultaneously pronounced third Constitutional Court’s LMR decision. It was now for the first time the PD/PD-L that attacked an LMR’s norm before the Constitutional Court. As generally expected, the court rejected in its fourth LMR judgment of 22 April 2008 the attacked article as unconstitutional.\textsuperscript{43}

\textbf{2.5 Delaying Tactics Till the End of the Constitutional Conflict}

It seemed thus definitely clear how to investigate and prosecute also (former) members of government who currently were deputies or senators. Therefore, still in April 2008 the Anticorruption Directorate asked the Parliament to allow investigations and prosecutions against Adrian Năstase (again in parts of the »Zambaccian I« case), Miron Mitrea, Ioan-Codruț Șereș and Paul Păcuraru. But by doing so the next procedural hurdles came on the scene: The standing orders of the two parliamentary chambers demanded for such decisions increased majorities – an absolute majority of its members in the Senate and even a two-thirds majority in the Chamber of Deputies.\textsuperscript{44} Moreover, most members of the lower house’s Legal Committee made clear that they were simply not willing to allow the prosecution of high-level corruption. Voting only against the PD-L, the committee recommended the rejection of the request in the Năstase case. The committee’s deputy chairman Florin Iordache (PSD) labeled it as a »politically ordered file, aimed at denigrating Nastase.«\textsuperscript{45} Concerning Miron Mitrea the committee refused to give a recommendation, but the deputy afterwards asked the chamber’s plenum to allow his prosecution, however, with similar reproaches to the prosecutors for politicizing their work: »Vote for it, please. I want to stand trial, to wrap up there this obvious abuse by the DNA«, said Mitrea.\textsuperscript{46}

\textsuperscript{42} The redrafting of Art. 23, § 2f. LMR had become necessary, once the first LMR judgment had declared it unconstitutional (see above, section 2.2).


\textsuperscript{45} Nine O’Clock, 20 June 2008, p. 3.

\textsuperscript{46} Nine O’Clock, 25 June 2008, p. 1.
Subsequently, the parliament allowed itself plenty of time with the processing of the DNA’s requests. On 24 June 2008 the Chamber of Deputies tried to vote on the Năstase and Mitrea cases but failed for lack of quorum. Although 248 deputies attended the session, only 208 of them casted their vote; 220 votes were required. At that time, the Senate had not decided at all about the Şereş and Păcuraru cases. In the end, both chambers postponed the entire issue until after the summer recess. The majorities in the standing bureaus simply did not deem it an urgent matter. They changed there opinion only when the EU Commission harshly criticized the attitude of the parliament in its progress report in late July 2008:

»Failure to move on these cases undermines the positive efforts undertaken at pre-trial level. […] However, efforts by DNA to continue investigations in some important cases have stalled as Parliament has not recommended that judicial procedures be launched. The reluctance of the judiciary and Parliament to allow investigation of these high profile cases results in a loss of public confidence. […] Independent investigation of former ministers and members of Parliament by the judicial authorities must be allowed to proceed in order to restore public confidence in the fight against corruption and in respect for the rule of law.«

President Traian Băsescu was only then able to push through his claim for extraordinary meetings of the parliamentary chambers, which he had already made a month before. However, even when faced with the EU pressure, the parliament was not willing to end its blockade of the fight against corruption without exception. On 13 August 2008 both requests in the Chamber of Deputies clearly missed the required two-thirds majority of 218 votes: Only 120 deputies voted in favor of the request against Adrian Năstase (150 against, six invalid votes) and 160 deputies agreed with the request in the Mitrea case (against 115 votes, one invalid vote). Thus, both proceedings had to be suspended. At least Miron Mitrea himself enabled the beginning of his prosecution by resigning his parliamentary seat on 3 September 2008. By contrast, on 26 August 2008 the Senate approved the requests against Ioan-Codruţ Şereş and Paul Păcuraru thanks to the lower threshold with 79-to-40 and 75-to-44 majorities (one invalid vote in each case). Four weeks later President Băsescu dismissed Păcuraru as Labor Minister right after the DNA had put him on trial as it was required by Art. 109, § 2 Const.

Thus, out of the eight inquired former members of government only Adrian Năstase was further on protected from investigation and prosecution. In the meantime, he even succeeded to return to the top management of his party, namely as president of the PSD’s National Council. On 31 July 2008 the Anticorruption Directorate asked the Senate to allow the prosecution of Petru Şerban Mihăilescu, the eleventh suspect that was spared so far by the DNA due to procedural reasons. In early September the prosecutors additionally submitted to the Chamber of Deputies

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48 He came back to parliament as Senator after the elections at the end of November.
two new demands for prosecution against Năstase referring to some other parts of the »Zambaccian I« case (publicly often called »Zambaccian II«) and a demand in the »Aunt Tamara« case. Unsurprisingly, a majority in the chamber’s Legal Committee – this time consisting of PSD, PNL and PRM – tried again to inhibit the prosecution of the former Prime Minister. Without further ado, it sent the request back to DNA while lapidary proclaiming »the existing evidence is null.« This obviously constituted an infringement of the law, because neither the constitution nor the Law on Ministerial Responsibility provides for such a possibility to leave the chamber’s plenum out. However, this result had endured until the end of the legislative period.

Apart from this, in early July 2008 the PD-L deputies and senators issued an abstract review before the Constitutional Court against the standing orders of both parliamentary chambers inasmuch as they provided for increased majorities for the approval of prosecution demands. The plaintiffs referred in particular to Art. 76, § 2 Const. which clearly stipulates that parliamentary »resolutions shall be passed by the majority vote of the members present in each Chamber.« In its fifth LMR judgment within only 15 months, the Constitutional Court on 1 October 2008 fully complied with the claims of the Democratic-Liberal Party. With this success the PD-L could definitely stylize itself as »the only political party that is fighting corruption« – at least so far.

In any case, with its fifth and until today final LMR decision the Constitutional Court signaled the end of the constitutional conflict on the fight against governmental corruption. Now all constitutional and subconstitutional blockade options had been cleared out, mitigated or at least legally clarified. The last word, however, was not to be spoken before the regular parliamentary elections on 30 November 2008. The elections brought a victory of the reestablished PSD+PC alliance over the PD-L by a slight margin, followed by National Liberals and the Democratic Union of Hungarians. Due to some anomalies of the newly introduced system of election, however, the PD-L received more seats than PSD+PC. President Traian Băsescu designated the head of the PD-L Emil Boc as new Prime Minister, who subsequently formed a government together with the Social Democrats and the Conservative Party. From a policy point of view a coalition with the PNL seemed much more obvious, but such a cooperation was simply held impossible by the PD-L and especially the President in consequence of the breakup of the PNL-PD alliance in 2007. The PD-L-PSD-PC coalition did not seem much more stable and it also broke up in the run-up to the presidential elections in autumn 2009.

49 Nine O’Clock, 11 September 2008, p. 3.
The tensions between Social Democrats and Democratic Liberals were already observable at the beginning of February 2009, when the »Zambaccian II« and »Aunt Tamara« cases were again to be discussed in the Chamber of Deputies. For a final time, PSD and PC tried to inhibit the prosecution demands, now even against their own coalition partner. With ten to nine votes the Legal Committee recommended a rejection of the request and asked the Anticorruption Directorate to convey further documents. However, when faced with the lower threshold for the plenary vote and the new majority situation in parliament, Năstase himself gave up the resistance to his prosecution – but, of course, not without stylizing himself as an innocent, politically persecuted champion of the rule of law:

»They say Nastase is not bold enough to prove his innocence, although it is obvious that it is not at all about guilt or innocence. They say I hide behind the Parliament, although the Constitution requires the Parliament's opinion on such things. [...] All these years [...] I have insisted that the Constitution and the other laws be respected. That is all. That is the only mistake I admit to having made all this time – that I wanted to fight for my principles and respect the laws of this country, although those who accuse me do not.«

In the end, on 4 March 2009 the Chamber of Deputies requested by a 158-to-128 majority with two invalid votes the prosecution of Năstase in the »Zambaccian II« and »Aunt Tamara« cases.

The Senators let even more time lapse away before they decided on the prosecution demand against Petru Şerban Mihăilescu. Finally, they approved the request on 10 June 2009 by a 77-to-29 majority with two invalid votes. Already in April 2008, the DNA had started the prosecution in the »Quality Trophy« case against Adrian Năstase. Although he had obviously used his position as Prime Minister in this case, the prosecutors restructured their indictment as referring only to his position as chairman of the Social Democratic Party. As a consequence the DNA did not further need the Parliament's approval for its work. Năstase was sent to court in this case on 16 January 2009. Finally, General Prosecutor Laura Codruţa Kövesi asked the Chamber of Deputies in May 2009 to vote again on the »Zambaccian I« case against Năstase, which the parliament had voted down in August 2008. She referred to the Constitutional Court's fifth LMR decision that had lowered the necessary threshold. However, all parties in the lower chamber except the PD-L rejected the renewed demand as inadmissible, because they regarded a repeated vote on the same issue as being not allowed. With a 116-to-100 majority and ten abstentions the »Zambaccian I« request was thus rejected a second time – a result enduring until today.

3 The Developments in the Anticorruption Policy since 2009: Further Legal Improvements, First Verdicts, New Investigations, and Ongoing Politicization

In the following years, the general political environment in Romania was characterized by instability. After the breakup of the PD-L-PSD-PC coalition, the remaining PD-L cabinet was
overthrown on 12 October 2009 by a vote of no confidence. PSD, PC, PNL, UDMR and the national minorities group in the Chamber of Deputies now tried to build a government. However, President Traian Băsescu inhibited this until the presidential elections on 22 November 2009 by consecutively appointing two chanceless candidates for Prime Minister, who each presented pure PD-L minority governments but did not reach a parliamentary majority. Băsescu succeeded with this tactics and won the presidential race against the PSD chairman Mircea Geoană in the run-off on 6 December 2009 by a very slight margin. Like in 2004, the formally independent President was afterwards able to form a new majority around »his« PD-L: Two existing groups of independent members of parliament were joined now by many PSD and PNL members who suddenly changed sides. Likewise, the UDMR and the national minorities group in the Chamber of Deputies aligned itself with the PD-L.

Therefore, the acting Prime Minister Emil Boc was able to form a PD-L-UDMR government which received the confidence vote on 23 December 2009. During 2010, the aforementioned independent deputies and senators founded a new party, the National Union for the Progress of Romania (UNPR), and officially joined the government as coalition partner. 2010 and 2011 were primarily characterized by the deep economic and financial crisis which caused the cabinet to radical measures like cutting state expenses, increasing the sales tax, cutting pensions etc. This lead to a grave loss of confidence among the population and culminated in January 2012 in massive street protests against the government. On 6 February 2012 Boc finally resigned as Prime Minister. He was followed by a renewed PD-L-UDMR-UNPR government lead by the independent Mihai Răzvan Ungureanu.

3.1 Further Legal Improvements

In spite of this unstable environment, the fight against governmental corruption got back into relatively shallow waters. Apart from the analyzed institutional improvements, this was aided on the personal level by the »duo« Traian Băsescu and Cătălin Predoiu. In fact, the Justice Minister was surprisingly the only member of government that had stayed in office since the very beginning of the legislative period in 2008. In contrast to his predecessor Tudor Chiuariu, Predoiu had sustainably continued to pursue the reform policies initiated by Monica Macovei. As a consequence, his term was extended by the then new Prime Minister Emil Boc, and in return Predoiu left the Nation Liberal Party. Since then, he has served as independent minister and was reappointed also by incumbent head of government Ungureanu. After the resignation of Boc in January 2012 it was even Predoiu who President Băsescu appointed as interim Prime Minister.

A couple of problems in the anticorruption policy had remained so far. Above all, the legal proceedings often went on for many years, rather than being decided by the courts in a timely manner. This was mostly caused by the many opportunities for procedural delays and interruptions, but also due to capacity reasons in the judiciary. Not least, this brought along the imminent danger of the limitation of actions. In this regard, two important improvements of the legal framework were made. First, by means of an amendment to the Constitutional Court Law in September 2010, the rule was deleted which stated that during a concrete review proceedings the related case pending before the ordinary court had to be suspended. Additionally, the High Court of Cassation and Justice (ICCJ) decided by an interpretative ruling in July 2011 that the statute-barred period of a case has to be extended as long as it is pending due to a concrete review before the Constitutional Court. Second, in October 2010 the parliament adopted a so-called »Small Reform Law«, which amended several provisions of the codes of procedure in order to accelerate the judicial proceedings. Moreover, in 2011 four new codes and procedure codes were voted in that will slim down and simplify the proceedings. They will come into force during the next two years.

Despite these important improvements, other central problems on the part of the courts have still remained,

»relating namely to capacity, internal organisation and judicial practice […] Furthermore, […] courts tend to adopt a permissive and excessively cautious approach to procedural challenges raised by defendants, such as requests for additional expertise, postponement of hearings or procedural exceptions. Basic case management measures such as giving priority to important or complex cases are not routinely applied.«

At the ICCJ these problems have been solved at least partly during the last year. However, other issues remain. First, the courts hesitate to sentence high-level corruption severely. So far, the verdicts in such cases (in general, not only governmental corruption) often remained close to the legal minimum, and in more than 60 percent of the cases the sentences were suspended. Of course, such a court practice will have no significant deterrent effect. Second, the judiciary itself has main corruption problems up to its top. In the last two years only, four out of about 100 ICCJ judges were charged by the Anticorruption Directorate with taking bribes and influence

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peddling, each case amounting at a six-figure Euro sum. As one can imagine, the bribability of High Court judges probably also influences governmental corruption cases.

To get back to the improvements, the parliament has officially also declared good will. In the general draft National Anti-Corruption Strategy for 2011–2014, answering mainly the demands and recommendations put forward by the European Commission, the parliament formulates the objective to strengthen the integrity of its members, above all by introducing »clear procedural rules for decisions of Parliament to lift the immunity of its members based on best practice in other EU Member States«. If this will be put into practice, this could indeed considerably relieve the remaining problems with the immunity rights of the members of parliament and also the (former) members of government.

### 3.2 First Verdicts in Governmental Corruption Cases

As mentioned at the outset of this paper, within the last twelve months the ICCJ had delivered the first seven verdicts on former members of government. In December 2011 the former Labor Minister Paul Păcuraru was acquitted from the charge of accepting bribes for the awarding of government contracts in favor of a family member. Whereas Adrian Năstase in December 2011 was likewise acquitted in the »Aunt Tamara« case due lack of evidence, the High Court sentenced him in February 2012 to two years in prison and banned him from running for a public office or parliamentary seat for the same period in the »Quality Trophy« case. As a first consequence, Năstase subsequently resigned as president of the PSD’s National Council. Already in April 2011 former Agriculture Minister Ioan Avram Mureșan was sentenced for embezzlement (1.2 million US Dollars from a USAID loan and 5,000 tonnes of cooking oil from the national reserve) to seven years in prison and was stripped of some of his civil rights for five years. In the »Black-Pudding« case, the ICCJ also sent him as well as his successor Decebal Traian Remeş in February 2012 to three years in prison for accepting bribes and aiding and abetting. In the case of Ex-Minister of Industry, Economy and Commerce Dan Ioan Popescu and his wife the High Court ruled in July 2011 that they were not able to provide an adequate justification for about 950,000 Euro of their assets. Therefore, the respective sum had to be confiscated and the defendants had to pay the legal expenses. Finally, the former Minister for the Coordination of the Government’s General Secretariat Petru Şerban Mihăilescu was convicted in December 2011 to a one year suspended sentence in the »Hunting Rifles« case. Mihăilescu had also to pay the legal expenses. However, the only definitive of these seven judgments is the acquittal of Paul Păcuraru. Concerning the other six cases it remains to be seen, whether the ICCJ will maintain its sentences.

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3.3 New Investigations

The extent of governmental corruption, however, has not shrunk during the last years. On the contrary: Whereas all aforementioned eleven politicians were put on trial in the meanwhile, the number of (former) members of government investigated by the Anticorruption Directorate increased from eleven up to 18:

- On 30 June 2009, the DNA requested the prosecution of the former Minister-Delegate for Privatization Ovidiu Muşetescu (in office 2001–2003, PSD member). He was accused of accepting bribes for the awarding of selling agreements of state-owned enterprises. President Traian Băsescu approved the prosecution in September 2009. Shortly afterwards, though, Muşetescu died of cancer.

- Since June 2009, Ex-Minister for Labor, Family and Social Protection Marian Sârbu (2008/09, at that time PSD, since 2010 UNPR) is under suspicion of a whole series of crimes, including abuse of office as well as aiding and abetting.

- Also in June 2009, Youth and Sports Minister Monica Iacob-Ridzi (2008/09, PD-L) was charged with embezzlement by contracting various services for the organization of the »Youth Day« (2 May 2009) at excessive prices, causing losses of approximately 650,000 Euro to the state. Additionally, she allegedly tried to destroy evidence when she realized the prosecutors’ preliminary investigations. On 14 July 2009 Iacob-Ridzi resigned from office due to this accusations. The DNA’s demand for prosecution was quickly approved by the Chamber of Deputies by a 192-to-35 majority. Nevertheless, led by the PNL-UDMR opposition and supported by the PSD (yet in government, since October also in the opposition), the parliament continued to investigate the case on its own. At the end, the Chamber’s Legal Committee issued a report proposing to begin a criminal pursuit against the former minister, although the DNA already investigated and prosecuted the case. Hence, the deputies openly politicized the issue of governmental corruption in order to show up the Democratic Liberals. On 20 October 2009 the report was passed by the Chamber with a 156-to-5 majority with three invalid votes in the absence of the PD-L deputies. A few months later the DNA asked the parliament to expand the prosecution. One the one hand, Iacob-Ridzi was accused in a new case of abuse of office by unjustifiably buying electronic equipment for the ministry. On the other hand, the prosecutors demanded the permission to conduct an investigation of the computers that the former minister currently used – a request that needed the approval of the parliament due to Iacob-Ridzi’s capacity as deputy. When these requests reached the plenum on 14 December 2010, however, the deputies stopped the prosecutors’ work: With 109-to-99 and 110-to-109 majorities the DNA’s requests were voted down. Even if the votes were casted by
secret ballot, it became obvious that the former minister was protected with the help of (at least some of) her fellow party members. As the presidential counselor Sebastian Lăzăroiu (PD-L) clearly recognized, the PD-L thereby lost its nimbus as the anticorruption party:

»This is catastrophic for PDL, obviously, as the party made fighting against corruption into its banner, and pleaded, while in opposition, so many times in favour of the unconditional lifting of parliamentary immunity […] PDL loses a major moral advantage and, as we speak, it is on par with the PSD, the party that has vehemently opposed in the last years some former ministers and prime ministers being investigated.«

In any case, the fight against governmental corruption was again politicized by the parliament, now on behalf of the Democratic Liberals, because legal proceedings were stopped by means of a political vote. However, concerning the »Youth Day« case Iacob-Ridzi has been on trial since May 2011.

− Since February 2011, the former Minister for Economy and Finance Varujan Vosganian (2006–2008, PNL) and the former Deputy Prime Minister and Minister for Administration and Interior Dan Nica (2008/09, PSD) have been suspected of abusing their offices in the context of the »Romanian Post« case (see above), in which the ex-ministers Tudor Chiuariu and Zsolt Nagy already stand on trial.

− On 20 April 2011 the Minister for Minister of Labor, Family and Social Protection Ioan Botiş (2010/11, PD-L) resigned in context of a conflict of interest. As became apparent, shortly after he came into office his ministry had approved a 500,000 Euro EU financing of a project carried out by a nongovernmental organization. This organization did not only employ Botiş’s wife as an adviser with a monthly fee of about 1,000 Euro but also rented its office in a house belonging to the Botiş family. The Anticorruption Directorate will probably prosecute Botiş in the near future for abuse of office and embezzlement.

− Finally, since July 2011 the current Minister of Environment and Forests László Borbély (since 2009, UDMR) is suspected of accepting bribes for the awarding of contracts with the Romanian authority for water resources.

In addition to these seven new suspects, two of the already mentioned former ministers were charged in a new case. In September 2011 the Directorate for Investigating Organized Crime and Terrorism (DIICOT) brought the former Economy and Commerce Minister Ioan-Codruţ Şereş before court for serious fraud and undermining the national economy. Together with six other persons he was accused of founding a joint criminal enterprise around the state-owned hydroelectricity company »Hidroelectrica«, bringing about damages of ca. 165 million US-Dollar. In the same case, Şereş’s predecessor Dan Ioan Popescu is currently also under suspicion.

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As the cases of Monica Iacob-Ridzi and Ioan Botiş have shown, in the recent past the Democratic Liberals had to face their own governmental corruption cases. Moreover: Since participating in the government (i.e. 2004–2007 and again since 2008) the party has produced a whole series of corruption scandals. Apart from the aforementioned ministers, the PD-L had lost no less than eight (!) secretaries and undersecretaries of state due to allegations of corruption, a ninth one still staying on office. Four of them were already indicted and a fifth even sentenced by the court of final appeal.62 This successive transformation of the PD/PD-L from the anticorruption party to an ordinary Romanian party with massive own corruption problems is hardly surprising. As mentioned at the outset of this paper, corruption is a widespread phenomenon in the Romanian political elite. They quite naturally use governmental offices for personal purposes against the public good and are not interested in a successful anticorruption policy. How could one single party become the only exception in such a environment? The PD did not grow on trees. Instead, it originated as a successor party of the initial post-socialist National Salvation Front (Frontul Salvării Naţionale – FSN) that was founded in the end of 1989. In 1992, the FSN split in two parties: the later renamed Social Democratic and Democratic Parties. The PD/PD-L has thus been an integral part of the Romanian party system for about twenty years. Therefore, for many party members anticorruption policy was just a promising campaign issue but not a serious objective. Furthermore, the reform-minded members were at no point in time able to »keep the party clean« by developing and implementing applicable institutional measures. Even protagonists like Monica Macovei – she joined the PD-L in 2009, won a seat in the European Parliament elections that year and is currently one of the party’s vice-presidents – remain marginalized within the organization. Finally, »political migration« between the parties and coalitions is a widespread phenomenon. Not least, it secured the PD/PD-L governments 2004–2007 and since 2009.

3.4 The Ongoing Politicization of the »Corruption« Issue

As the developments around the investigations against Monica Iacob-Ridzi already have shown, politicians from all parties use allegations of corruption for pure political purposes. Virtually unlimited examples could be recited here. Even Monica Macovei was repeatedly publicly alleged. This general impression shall be further confirmed here by only two alleged corruption cases that have recently attracted the attention of the parliament – but, interestingly enough, not that of the

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62 In April 2011, the former Secretary of State within the Economy Ministry and current member of the Chamber of Deputies Cosmin Popescu was sentenced to two years in prison for abuse of office and forgery of official documents. Although he left his party in this context, he decided to stay in parliament – even from prison. So far, Popescu is the first of two former secretaries of state who were convicted in a corruption case. In February 2012, the former Secretary of State for the Problems of the Revolutionaries of 1989 Vasile Emilian Cutean (PSD) was sentenced to five years in prison by the court of final appeal. He was found guilty of embezzling about 85,000 Euro, among others in order to finance his private residence. As mentioned at the outset of this paper, currently altogether twelve former or current secretaries and undersecretaries of state are under suspicion of corruption.
competent prosecution offices. The Chamber of Deputies investigated the Minister for Regional Development and Tourism Elena Udrea (2009–2012, PD-L) for abuse of office, instigation to abuse of office, negligence in office and embezzlement. On 20 October 2009 – the same day the lower house passed its report against Iacob-Ridzi – the Chamber also voted in the absence of the PD-L a report against Udrea with a 125-to-98 majority with four abstentions. As the relatively narrow majority already suggests – the Iacob-Ridzi report was approved with 156 votes in favor and only five votes against – even many parliamentarians were skeptical towards the substance of the report. Finally, the prosecution office attached to the High Court of Cassation and Justice decided to not start investigations against Udrea because of insufficient causes for suspicion. PNL vice-president Ludovic Orban subsequently went so far to label this decision as »illegal« and to request the dismissal of General Prosecutor Laura Codruța Kövesi.63

On the other side of the political spectrum the PD-L also pressed for a parliamentary demand for prosecution against an opposing politician in 2009. The former PNL chair (2004–2009) and Prime Minister (2004–2008) Călin Popescu-Târiceanu was charged with undermining the national economy and abusing his office as head of government in the context of a contract between the state and a Canadian oil company on a concession on the Black Sea plateau. In February 2010 the Democratic Liberals gave up this. As their leader in the Chamber of Deputies Mircea Toader little reliably declared, »it is not the duty of Parliament to establish who is guilty, there are competent authorities to do this.«64 However, it became clear that the PD-L had also started to use the corruption issue for political purposes.

4 Conclusion: Fighting Governmental Corruption in Romania – Towards Irreversible Results?

The fight against governmental corruption in Romania has made an impressive progress during the last decade. In a basically »corruption-friendly« social and political environment this is all but self-understanding. Sure: From the point of view of social sciences, it makes much sense to leave the term »corruption« aside and to analyze South East European – »Balkan« – societies instead with concepts like political culture or patrimonialism.65 However, the fact remains that within the Romanian society political and especially governmental corruption is seen as a main problem: Ac-

63 Nine O’Clock.ro, 9 February 2010; <http://www.nineoclock.ro/pnl-requests-kovesi8217s-dismissal/>, 03/01/2012. To be honest, Udrea is not considered as a person of integrity. In November 2005, for instance, she had to resign as presidential adviser due to allegations of abuse of office. However, this general image has to be distinguished from concrete criminal evidence.
64 Nine O’Clock.ro, 4 February 2010; <http://www.nineoclock.ro/pdl-gives-up-asking-for-tariceanu-criminal-pursuit/>, 03/01/2012.
According to the latest Eurobarometer poll, 96 percent of the Romanians totally agree that corruption is a major problem in their country, and 78 percent believe that corruption is more widespread there than in the other EU member states, both figures being among the highest among all EU member states. Therefore, the anticorruption policies cannot be discounted as only being a foreign phenomenon, carried in by the European Union.

The presented analysis has brought two major insights. On the one hand, the occurrences around the fight against governmental corruption have confirmed the initial assumption that informal factors like political culture, historical legacies, economic inequality, low levels of generalized trust and persistent patrimonial networks are primarily able to explain the continuing high level of corruption in Romania. On the other hand, it was also clearly shown that the structure of formal institutions significantly influences the development and success of the fight against corruption. The constitutional and subconstitutional rules on the ministerial responsibility have inhibited the work of the law enforcement agencies for more than two years. Further, these agencies – above all the Anticorruption Directorate – were able to successfully investigate and prosecute corruption crimes mainly due to important and constant improvements of the legal framework. And finally, the recent amendments to main procedural rules of the court practice will probably lead to faster legal proceedings, thus preventing the danger of the limitation of actions.

In a comparative view of both formal and informal factors I would like to draw the conclusion that even if the prosecution of governmental corruption becomes regularly successful, the very phenomenon of governmental corruption will not decline or even disappear in the short and medium run. This is caused by the fact that policy decisions and formal institutions can transform cultural dispositions and social structures only in the long run. Three current examples might prove this: First, it has been common practice so far, that members of parliament convicted for a corruption crime retain their mandates – even if they were sent to prison. Obviously, there is no perception that convicted persons should not be representatives of the people or should at least be kept away from the public offices or mandates which they have abused for their crimes. Second, politicians and public offices do not hesitate to close lucrative deals with each other. As an analysis of the obligatory wealth declarations showed in January 2011, 72 mem-

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67 See e.g. the above mentioned case of Cosmin Popescu, who is currently only one out of six sentenced members of parliament.
68 At the moment more than 20 (!) former or current members of parliament (plus the former or current members of government who were referred to in this paper!) are under suspicion of, charged with or already indicted of corruption crimes. The deputy Virgil Pop (PNL) even won his seat at the elections in November 2008 while sitting in custody. That time, the daily newspaper Cotidianul commented on the results of the elections: »Anticorruption directorate has own parliamentary group«. Cotidianul, 2 December 2008; <http://www.cotidianul.ro/dna_are_grup_parlamentar-66471.html>, 03/01/2012.
bers of parliament and three ministers from all parties had contracts with the state in the amount of 258 million Euro, leading in individual cases up to 23 million Euro. Third, when Mihai Răzvan Ungureanu became new Prime Minister in February 2012, his namesake Traian Ungureanu (PD-L, member of the European Parliament) received dozens of congratulation phone calls. However, as he communicated on a press conference, most congratulators asked him

»for countless favors, and even for phone numbers [...] I want to notify the Prime Minister that I now have an impressive collection of text messages and recorded telephone calls on my disposal, which mainly are about the need for favors.«

To sum up, one should certainly not have high hopes that the Romanian political elite will change its habitus in the near future. Nevertheless, the prosecution offices and courts are generally able to continue and further improve their anticorruption policies. As the presented analysis has shown, these institutions nowadays clearly follow the logic of the rule of law, i.e. investigating, prosecuting and indicting crimes without distinction of person and its political affiliation. However, it remains an open question whether changes of the political environment will lead to backlashes. The current opposition leader, PSD chairman Victor Ponta, at least stated lately that his party and the PNL as its current alliance partner are not going to »touch the legal structure of the National Anti-corruption Office«.

In any case, four institutional obstacles still remain. First, the basic problem of the parliamentary or presidential consent requirement for prosecution demands has not been removed. Therefore, any new case of governmental corruption prosecution has to leap this hurdle, i.e. to get the approval of the president, the deputies or the senate. As a consequence, the danger remains that the enforcement of the law can founder on these mainly political institutions. As the decisions on the »Zambaccian I« case against Adrian Năstase revealed, this is not only a theoretical problem. Second, although many improvements of the legal procedure have been introduced during the last years, it cannot be ruled out that proceedings will exceed the statute-barred period and therefore end without indictment. Third, it remains to be seen whether the Romanian courts are consistently willing to sentence high-level corruption severely and thereby produce a significant deterrent effect. The first verdicts in governmental corruption cases give a quite optimistic outlook on this question. Finally, the hurdle of parliamentary immunity remains for all those former or current members of government that are deputies or senators at the time of a conviction. As already mentioned, they »shall not be searched, detained or arrested without the consent

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70 Punkto.ro, 24 February 2012; <http://www.punkto.ro/articles/MdEP_Traian_Ungureanu_mit_neuem_Regierungschef_verwechselt_Ale_Welt_ruft_mich_an_un_Gef%C3%A4lligkeiten_zu_er bitten-3713.html>, 03/01/2012.

71 Nine O’Clock, 15 February 2012; <http://www.nineoclock.ro/ponta-if-we-come-to-power-we-won%E2%80%99t-touch-dna-and-ani/> , 03/01/2012.
of the Chamber they belong to« (Art. 72, § 1 Const.). This means that a possible execution of an imprisonment sentence would be again subject to the (political) decision-making power of the parliament, and it would be interesting to see whether the legislature will actually agree to an imprisonment of prominent politicians. Eight of the currently indicted former or current government members enjoy this protection: the deputies László Borbély, Ioan Botiș, Tudor Chiuariu, Monica Iacob-Ridzi, Adrian Năstase and Marian Sârbu and the senators Miron Mitrea and Varujan Vosganian. In the case of Iacob-Ridzi, the Chamber of Deputies was not even willing to allow the prosecutors a computer search. Therefore, the question of parliamentary immunity will probably be the next major challenge for the fight against governmental corruption in Romania.