

# European Union Efforts To Fight Judicial Corruption – The Romanian Case

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by

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## ABSTRACT OF THE THESIS

# European Union Efforts To Fight Judicial Corruption – The Romanian Case

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This Master's thesis addresses the EU efforts to fight judicial corruption in Romania. I argue that EU membership conditionality was relatively effective to lower the level of judicial corruption before Romania entered the EU in 2007. In addition, the EU socialization and the domestic factors – legacy of communism, objective-material factors, and public opinion and levels of public trust – are quite influential regarding the implementation of EU initiatives and show the complexity of the Romanian case. Rather than using merely the top-down logic of corruption indices or governance indicators, I also apply a bottom-up perspective and therefore particularly draw attention on disregarded measurement. This approach bears the benefit of capturing a range of informal practices that are misinterpreted by the recent conceptualization of corruption. The before-after case study design and the process-tracing method allowed the analysis of pre-accession and post-accession conditionality in the context of judicial corruption. By assessing the EU progress reports, the NIT scores and reports, the CPI and the GRECO reports, I found several remarkable developments regarding the fight against judicial corruption. Two of the key elements of EU conditionality – conditions and monitoring – have evolved significantly. Thus, the introduction of post-accession benchmarks and the strengthening of

the monitoring process represent important steps in the evolution of EU efforts to fight judicial corruption in Romania. However, the analysis shows that it is difficult to compensate the pre-accession conditionality through post-accession monitoring mechanisms. Although the analysis confirms that EU efforts had a significant impact to fight judicial corruption in Romania before accession, there is still room for improvements for the post-accession phase. Regarding the incentive structure, the analysis of the key documents finds evidence that this element of EU conditionality may be the main weakness. After Romania entered the EU, the EU lost its attractive accession advancement rewards and was merely able to rely on explicit threats to induce compliance. However, the limited penalizing power of the remedial and preventive sanctions set up in the framework of the CVM causes a fairly weak incentive structure which negatively influenced the effectiveness of post-accession conditionality.

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## **1. Introduction**

### **1.1 The Roots of Corruption in Romania – Historical Overview**

Aiming at analyzing the impact of European Union (EU) efforts to fight judicial corruption in Romania, it is worthwhile to consider the history and various forms of corruption in Romania. Furthermore, it is vital to understand how corruption may have affected the political, public and economical environment. In general, Romania – as a post-communist and transition country – has been experiencing corruption as a deeply rooted and long-term problem. In fact, Romania is not the only post-communist country who faced the problem of corruption. The breakdown of communism created immense opportunities for corruption throughout the post-communist region (Moroff and Schmidt-Pfister 2010). In other words, the fall of the 'Iron Curtain' gave rise to a vacuum that led to the necessity of revising the rules of the economy and the state. Hence, those elites who were in office in the early years had the power to write those rules in their own interest. Even if appropriate rules were written, actors could rely on political connections, dysfunctional state institutions and corrupt judiciaries to continue with corrupt practices and escape prosecution (Kornai and Rose-Ackerman 2004; Vachudova 2009).

In the Romanian case the effects of corruption are significant. First, corruption was guided by mistrust between society and the political elites which, on more than one occasion, have stimulated the rise of powerful extremist movements. This means that corruption weakened and undermined liberal democracy as political elites disregarded the legal limits of their power. Secondly, corruption enhanced the impoverishment of the society by reducing economic growth, undermining entrepreneurship, and stealing from

the state (Gallagher 2009, 203; Vachudova 2009, 44). Rasma Karklins proposes a valuable categorization of the various kinds of post-communist corruption. She distinguishes between low-level administrative corruption, self-serving asset stripping by officials, and state capture by corrupt networks in post-communist Europe (Karklins 2002, 24). The countries that have undergone pervasive capture by corrupt networks since 1989 are the ones that continue to have the most serious problems with high-level corruption. In this context, Romania had a highly corrupt and unreformed former communist party that captured the state and governed almost unopposed between 1989 and 1996 (Gallagher 2009; Vachudova 2009). Also, Romania was one of the worst performing post-communist countries with regard to the level of judicial capacity and independence (Vachudova 2009, 45).

In short, until the end of the 1990s the pace of the Romanian judicial reforms seemed to stagnate caused by the political impasse, which resulted from the party system and the personalization of Romanian politics. However, some changes were achieved by the ratification of a new constitution (1991), which restructured and reorganized the judiciary and therefore began to revise the Civil and Criminal Code. The reform gained more momentum when Romania joined the Council of Europe (CoE) in 1993 and was asked to implement the principles such as the rule of law, respect of minorities, and the independence of the judiciary. Nevertheless, the Romanian government in theory accepted the CoE standards of reform, but in practice ignored them (Parau 2011a, 14). Before the 2003-2004 revision of the constitution under external guidance, the Romanian judiciary was riddled with symptoms of underdevelopment and of the legacy of Communism: corruption, lack of impartiality, unprofessionalism, and undue political interference (Parau 2011a, 12; 2011b, 22).

Why is it an important and compelling issue to study judicial corruption in the Romanian case? In 1999 the EU began negotiations for the accomplishment of the ac-



acquis communautaire in Romania and agreed on the 'Second Accession Partnership', based on the prior issues that were included in the 'National Plan for the Acquisition of the Acquis Communautaire'. Hence in 1999 the policy instruments, formulated by the European Commission (EC) to assist the process of accession, were almost completely elaborated. By starting the pre-negotiation period in 1999, the EC ramped up the monitoring process of the policy issues interrelated with the judiciary that included such policy topics as rule of law, anti-corruption, minority rights, human rights, judicial cooperation, and border control (Grabbe 2009, 305; 307; Piana 2010, 134).

In 2002 a hold was put on Romania's membership. This was a result of the weak performance with regard to the implementation of the acquis communautaire. One of the key concerns was the extensive corruption. Moreover, the lack of transparency and professionalism of the state institutions – in particular the judiciary – were further key elements of the concern (Vachudova 2009, 52f.). In 2005 when Romania signed the EU accession treaty, Christian Piruvlescu, a highly prestigious Romanian political scientist, was cited in an interview with the German weekly magazine 'Der Spiegel', in which he underlined that:

"Corruption is a general phenomenon in this country [...] the network of corruption extends to virtually every level within the government bureaucracy, including business-people, district attorneys and police officers, They're all part of the system. And it is a powerful system" (von Hammerstein, Kraske, and Szandar 2005).

This statement could have also obtained validity for the inter-war period after World War II when Romania had the image of being the most corrupt state in Eastern Europe. Referring to Cristiana Parau (2011), Romanian judges' authority are undermined too by their own venality. Furthermore, there was evidence from interviews that Romanian judges themselves had claimed that the judiciary is corrupt (Parau 2011b, 29). In this context, Grødeland (2005) highlights that Romanian judges were vulnerable due to internal and external pressure.

The EU remained suspicious as to whether Romania could manage its problems concerning judicial reform, corruption and organized crime. Thus, they introduced a 'co-operation and verification mechanism (CVM)' in 2007. With the CVM the EU aimed at extending its leverage into the post-accession phase (Vachudova 2009, 52–3). This instrument had the goal to decrease judicial corruption by threatening Romania with sanction if it did not intensify its efforts. Another point, which highlights the importance of judicial corruption for the EU, is the fact that the EC directly funded the fight against it. In 2005 the EU paid for the computerized system, which now randomly distributes court cases to Romanian judges. However, there is already skepticism if the parameter of randomization is being manipulated (Parau 2009, 23; 2011b, 31).

Regarding the July 2008 EU progress report, the results were fairly positive, remarking that the Romanian government has made some progress in strengthening the judiciary and prosecute crime. Nonetheless, the results from the February 2009 EU progress report were more negative (European Commission 2008; 2009a). Recently, the EC has published the February 2011 interim report on Romania, which points to significant shortcomings in Romania's efforts to achieve progress. Although progress was made in adopting the 'Civil and Criminal Procedure Codes', Romania showed overall insufficient political commitment in support of the reform process. Additionally, the leadership of the judiciary seemed unwilling to concur and did not show accountability for the benefit of reform. Eventually, the EC recommended speeding up high-level corruption trials and strengthening its anti-corruption measures. Also, the report noted that the 'National Integrity Agency' has suffered from budget cuts (European Commission 2011a).

As the historical overview has shown, the EU required standards if Romania wanted to join the EU. Nevertheless, it is questionable if these standards were satisfactorily implemented and executed by the Romanian government and judiciary. Conse-

quently, even after Romania's accession the EU must continue to manage problematic policy issues, and especially to fight against judicial corruption to overcome the corruption 'viruses' in the different sectors. This led to these present research questions: (1) Have EU efforts to fight judicial corruption in Romania had a significant impact? (2) Were EU efforts more effective before or after the EU accession?

## **1.2 Roadmap**

The argument that I advance is that many anti-corruption initiatives failed in post-communist countries. Many of these anti-corruption initiatives coming from the 'Western' world can and are seen as arrogant power exercises rather than efficient policy innovations (Kubik and Linch forthcoming 2011). This argument also finds support in Mungiu-Pippidi's study when she argues that "[T]he problem is that both the assessment instruments (which result in a descriptive 'anatomy of corruption') and the resulting anticorruption strategies seem to be simply replicated from one country to another" (Mungiu-Pippidi 2006, 91). For instance, the Ombudsman concept, a Scandinavian institution to supervise the investigation of complaints of inappropriate government activity against citizens, has been reproduced in several new democracies. This concept has been mostly unsuccessful because of unadjusted replication (Mungiu-Pippidi 2006, 86). I argue that EU membership conditionality (e.g. material incentives and *acquis communautaire*) was relatively effective at lowering the level of judicial corruption before Romania entered the EU in 2007. Moreover, the domestic factors – legacy of communism, objective-material factors, and public opinion and levels of public trust – are quite influential regarding the implementation of EU initiatives and show the complexity of the Romanian case. The EU socialization through judicial networks (e.g. European Judicial Training

Network) and legal epistemic communities may be a valuable contribution to directly socialize Romanian elites to EU norms and values in a sustainable manner.

In addition to the introduction, the thesis consists of four further sections. Section II reviews the relevant theoretical literature from which I derive four hypotheses. The literature review mainly deals with literature on judicial reforms and judicial corruption in post-communist countries and more specifically in Romania. As a supplement, I consider broader literature which tries to explain the emergence and maintenance of corruption and explicitly judicial corruption by using a wide range of factors. Section III – the research design – elaborates on the methodological proceeding of the thesis and gives an outlook on observable implications of the four hypotheses. Section IV – the empirical section – reviews evidence concerning EU efforts to fight judicial corruption in Romania. I assess my argument empirically and test the fourth hypothesis by drawing on scores to measure the level of judicial corruption and a plethora of materials from secondary sources (e.g. the EU progress reports, Nations in Transit (NIT) reports and Group of States against Corruption (GRECO) reports). Section V concludes with the main findings.

## **2. Literature Review**

The first section of this paper introduced the history of corruption in Romania, and various characteristics of corruption. This section reviews the major literature in the field of judicial reforms and judicial corruption in post-communist countries with special focus on Romania. Analyzing the main arguments of the diverse literature, I derive four hypotheses. Later on, in the empirical section, I expound potential observable implications of the four hypotheses and assess the fourth hypothesis in depth. There is rich

literature focusing on post-communist judicial reforms and judicial corruption and how the EU has managed these issues before, during and after the EU accession process. Such theories often distinguish between ‘first wave’<sup>1</sup> and ‘second wave’<sup>2</sup> EU accession candidate countries.

## **2.1 EU Socialization – Do Judicial Networks and Legal Epistemic Communities really matter?**

Daniela Piana’s (2009) article about post-communist judicial reforms and her book about judicial accountabilities in New Europe (2010) offer important insights with regard to EU efforts to consolidate the judicial systems of post-communist countries. First, her article discusses the logic of action of the judicial reforms adopted in Poland, Czech Republic, and Hungary and therefore in ‘first wave’ EU accession candidate countries. Related to the EU socialization, the empirical evidence confirms that the processes of reform have been deeply influenced by the national actors who had been empowered during democratic transition. They have been able to fully exploit the resources provided by the EU (Piana 2009, 819). This may be considered when it comes to the analysis of judicial corruption in Romania.

Secondly, Piana’s book (2010) has provided a new perspective on how to view, evaluate and measure judicial accountability. Her analysis has a focus on three ‘first wave’ candidate countries (Poland, Czech Republic and Hungary) and on the two ‘second wave’ candidate countries (Bulgaria and Romania). In her analysis she states that the EU and the CoE<sup>3</sup> were central actors and largely the catalysts for judicial reform

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<sup>1</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

<sup>2</sup> Bulgaria and Romania.

<sup>3</sup> With regard to external European pressure, I argue that the CoE is an important factor. Nevertheless, the CoE is less decisive when it comes to the leverage about its member states. While Romania joined the CoE

in the post-communist nations and she explicitly claims that the ‘second wave’ candidate countries needed the EU to set the agenda for formulating judicial reforms. The EU then practiced “well-targeted and credible” external pressures to force their adoption (Piana 2010, 124). On the one hand, authors support such findings by claiming that the “golden carrot of full EU membership” is generally effective in persuading national governments to formally adopt rules and institutions they would otherwise resist (Morlino and Magen 2009, 229). Hence, accession conditionality may be seen as the key in this case. On the other hand, Parau (2011a) states that “accession conditionality did matter but only insofar as, at the tail-end of Romania’s constitutional reform, it tipped the balance of forces in favour [sic!] of maximal (instead of merely sweeping) judicial empowerment” (Parau 2011a, 10). Moreover, Piana pays particular attention to strategies that were used to encourage and assist the new democracies in the process of judicial reform (monitoring, twinning, training and networking). Thus, a set of ‘European standards of legal accountability’ were created as objectives and yardsticks for the applicant judiciaries to achieve.

The bulk of judicial cooperation promoted by the EC relied upon two different mechanisms, political conditionality and socialization (Grabbe 2009; Schimmelfennig 2004). In fact, the EC expected the candidates to enact judicial reforms in order to guarantee the application in relation to the *acquis communautaire*. Piana states that post-communist courts suffered from a main shortcoming, which depended on their limited and weak institutional capacity. The backlog of the courts was one of the main concerns of the EC. As a result, the EC was a strong supporter of the implementation of court management models based on information communication technology, a clear pattern of

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in October 1993, the CoE cannot use membership conditionality like the EU. Thus, the adjustment pressure will remain constant over time and is therefore less influential with regard to fighting judicial corruption.

administrative accountability, and the introduction of the court manager (Piana 2009, 828; 835).

Derived from Piana's research, I argue that it is worthwhile to consider socialization as it takes place within institutions. "In a bureaucratic judiciary, training and socialization led by supranational networks [...], the EU deployed a strategy that, despite its not being legally binding, should not be under-estimated" (Piana 2010, 178). Johnston (2007) called this kind of conceptualization "institutions as arenas of socialization". The EU was one of the main catalysts for the judicial reform in the post-communist countries. In this context, the first hypothesis takes the EU socialization with regard to judicial networks and legal epistemic communities into account. (1) The various judicial networks like the European Judicial Network in Criminal Matters (EJNCM), the European Judicial Training Network (EJTN) or the European Network of Councils of the Judiciary (ENCJ) are merely three examples, which show the efforts of the EU to socialize the judiciary of Romania with EU norms and values. The judicial networks may be seen as 'meeting of minds' where judicial experts from different EU member states share their experiences with a goal of promoting best practices and to address common problems (e.g. the fight against judicial corruption) on a EU-wide scale. Furthermore, these networks can help harmonize national policies relating to the judiciary and can support the efforts of domestic officials (Burke-White and Slaughter 2006, 334; O'Meara 2011, 11; 20f.). (2) The legal epistemic communities typically assist in issues with regard to a technical nature and therefore work in close relation with EU experts and bureaucrats. In general, legal epistemic communities direct decision-makers towards the adequate norms and institutions by framing and institutionalizing the issue-area (e.g. judicial reforms). This means that these communities are quite important starting points of EU socialization. For instance, Alina Mungiu-Pippidi, founder and president of Romania's largest think tank, the Romanian Academic Society (SAR), may be seen as a key member of these communities.

Moreover, legal epistemic communities may have direct or indirect roles in policy coordination by diffusing concepts and ideas and influencing the positions adopted. Despite the soft nature of power used in this policy field, EU judicial networks and legal epistemic communities – as EU socialization efforts– may transform the Romanian judiciary.

*H 1: If EU judicial networks and legal epistemic communities have direct leverage on the judiciary, then EU socialization efforts may strengthen the Romanian judiciary and therefore support the fight against judicial corruption.*

## **2.2 Legacy of Communism and Objective-Material Factors**

Piana (2009) also makes the point that countries that inherited a similar legal culture did not address the judicial reforms in the same manner. Derived from her comparison of the three countries, Piana claims that in the judicial policy field, communist elites were most directly related to judicial actors, particularly with high-level judges (Piana 2009, 819). Since Romania is also a post-communist country in which communist elites played a key role in history, this aspect should be considered in future research and therefore in the formulation of the related hypothesis.

In addition to the abovementioned studies by Piana, which are directly related to judicial corruption and judicial reforms in post-communist countries and especially Romania, there is a rich body of broader literature, which claims that societal, cultural, domestic, and international conditions may play a fundamental role with regard to corruption in general, and judicial corruption in particular. Thus, this kind of literature may be seen as a complementary source to study judicial corruption and therefore improves the perspective on how to approach judicial corruption in the Romanian case.

Leslie Holmes' book "Rotten States? Corruption, Post-Communism, and Neoliberalism" (2006) is a sophisticated study of the link between official corruption and political



legitimacy and crisis in post-communist states. He claims that corruption undermines the legitimacy of the state and provides several important hypotheses which may contribute to the argument that I advance in my thesis. First, Holmes reviews how corruption affects the environment, individuals, the economy, society, other countries, and politics and legitimacy. Thus, his profound analysis underlines the importance and seriousness of the problem for post-communist countries. Secondly, he discusses cultural, psychological, and system-related factors that cause corruption. By system-related factors he refers to the legacy of communism, the multiple and simultaneous transitions (e.g. economic, political and legal) that created plentiful opportunities for corruption. The first domestic hypothesis, which I elaborate later on, considers the legacy of communism and objective-material factors in Romania by focusing on party constellation and the elites from the communist era. Holmes states that “[t]he single most important explanation for corruption in the post-communist world is that the system is still crystallizing and consolidating, and that most post-communist states are ultimately weak states” (Holmes 2006, 206). Thirdly, he assesses recent measures of fighting corruption and their impacts on countries. Moreover, he considers how Western countries, international organizations, transnational corporations, and civil society affect the dynamics of corruption in post-communist countries. He highlights that “international organizations need to work more closely with civil society, rather than fund states to police themselves” (Holmes 2006, 252). By highlighting the importance of the civil society, I suppose that the public opinion and the levels of public trust in the judiciary may be seen as important domestic aspects, while analyzing the EU efforts in the Romanian case. Subsequently, I derive my second domestic hypothesis from further literature, which I discuss later on. Eventually, Holmes discusses further variables, which may have an impact on the level of corruption. In this context, he evaluates media, territorial and population size, culture, ethnic homogeneity, and approaches to transition reforms correlate with the level of corruption; these va-

riables are the criteria that the scholar used to select his case studies and therefore I do not assess them in my thesis.

The article by Parau (2009) asks what kind of judiciary is emerging in post-communist Eastern Europe. “Universally assumed to be the mainstay of the rule of law, an independent judiciary is the cynosure of judicial efforts in CEE” (Parau 2009, 2). In particular, the EC has advocated an independent judiciary for EU candidates. In this context, the implementation of this agenda is usually evaluated by non-governmental organizations with stake in the matter, which often make merely an inventory of formal institutions, such as appointment procedures, without critical analysis. Her main argument is that Romania and wherever else the EU has exerted leverage in like circumstances, reform efforts may have conducted the judiciary toward a problematic ‘supremacism’ over the democratically elected powers of government (Parau 2009, 2). The existence of judicial corruption in Romania led to the EU’s threat in 2004, which resulted in the idea to impose post-accession safeguards (e.g. CVM) if inter alia Romania did not overcome the judiciary’s problems including venality. To sum up, Parau argues that the specific details of the reform have resulted from the pressures of accession and from domestic motives (Parau 2009, 37). Moreover, she states that external pressures do not explain everything and that internal political dynamics and national judiciaries have also played a vital role in enforcing the direct effect of EU law. In this regard, she also sheds light on the possible relationship between the judiciary and elected politicians in Romania (Parau 2009, 38).

The first domestic hypothesis considers the legacy of communism (Holmes 2006) and objective-material factors. In this context, Piana hypothesizes that independently from the credibility and determinacy of the external pressure, the empowerment of the judicial actors comes from the democratic transitions, which determine “who gets what” from the opportunities of action opened by the external actors in each country (Piana

2010, 121f.). Thus, I narrow down the focus on the power of elites from the communist era and the landscape of political parties. Young (2010) remarks that accounts of political parties and elected officials exploiting the state for personal gain are still common place. Regarding the legacy of communism, Piana remarks that in the judicial policy field, communist elites were often directly related to judicial actors, especially with high-level judges (Piana 2009, 819). In particular, political pressure was used to influence the judge's decisions. Moreover, prosecutors as well as judges claimed that there had been attempts at influencing them – sometimes indirectly through media and sometimes on the part of political interests. From time to time the pressure came from within the judiciary itself, when judges aimed at reaching a certain outcome (Grødeland 2005, 44). In this context, Parau underlines that a key feature of the Communist regime in Romania was judicial politicization. Judges were part of the 'nomeklatura' of the communist party, which strongly controlled their appointment. The separation of three branches existed only on paper. Hence, the communist party monopolized control of all executive, legislative and judicial functions. With the fall of the Communism, immense changes were needed to reconstruct an authentic judiciary (Parau 2009, 14f.). Due to factional infighting, the ruling anti-Communist coalition merely governed between 1996 and 2000 and could not effectively influence the judicial reform efforts in Romania. The Social Democratic Party (PSD), the successor to the communist party, governed from 2000-2004. Thus, the PSD and the anti-Communist coalition are examples for the internal political dynamics that show how Romania had still to fight with its communist legacy and its landscape of political parties.

*H 2: As long as elites from the communist era maintain important positions in political parties and in the judiciary, there will be no real changes with regard to fighting judicial corruption in Romania.*

### **2.3 Public Opinion and Levels of Public Trust**

Eric M. Uslaner (2005) assesses in his study the relationship between corruption, inequality and trust. He posits a model where inequality, mistrust, and corruption are mutually reinforcing. His argument on the sources of corruption is that corruption is not easy to eliminate if it is largely based upon the distribution of resources – economic inequality – and a society's culture – trust in people who may be different from oneself (Uslaner 2005, 7). Additionally, he highlights the fact that the justice system is of particular importance. To begin, a corrupt court system – for instance the one in Romania – can shield dishonest elites from redistribution. Secondly, the courts – more than any other branch of the polity – are acknowledged to be neutral and fair. If this is not the case like in Romania, the two key dimensions of the legal system – fairness and efficiency – may be violated. The efficiency of the courts should not matter so much for corruption – since rounding up the corrupt leaders and putting them in jail only makes room for a new group of rogues, doing little to address the underlying causes of corruption. Reflecting the advantages that some people have over others, fairness is the key to the connection between law and corruption. He argues that an independent judiciary is important to the rule of law, but independence is not sufficient. Also, efficiency of the court system matters as well. This means that long delays in legal affairs may cause iniquities in justice and make firms reluctant to enter into contracts (Uslaner 2005, 20f.).

Vartuhi Tonoyan (2003) shows in his paper that corruption is also linked with deficiencies in trust. His research has demonstrated that if there is a high level of trust in an institution, such as the judiciary, there is a lower level of corruption. Thus, building trust in a society's legal institution is an essential factor in fighting corruption. Political will in fighting corruption is a key method to build the trust. From building support for anti-corruption activities, to sanctioning officials who engage in corruption, to demonstrating

an on-going effort in the battle against corruption, a society committed to controlling corruption can work together to make the tough choices and changes necessary (Brinkerhoff 1999). Conversely, the less demonstrated political will for fighting corruption the more corruption is accepted in society. Hence, his argumentation can be considered and applied in the Romanian case, while trying to build a profound hypothesis.

Rose-Ackerman (2001) states that limiting low-level bureaucratic corruption is often in the interest of top officials who may try to enlist ordinary citizens in the effort. Often corruption is associated with untrustworthy government officials. Moreover, the fundamental cause is the search for economic gain on both sides of the 'deal'. Hence, this represents a betrayal of public trust. However, it may also be controlled by lowering the paybacks and raising the costs of particular corrupt transactions. Through both limits on political power and changes in public attitudes toward the exercise of that power, corruption may be assessed indirectly. There is evidence for believing that the transition process gave rise to special strains. Democratization may boost and increase corruption if it is accompanied by weakening of state controls and confusion among the population about correct behavior in terms of increased freedom (Rose-Ackerman 2001, 19).

Åse Berit Grødeland (2005) remarks in her study about informal networks and corruption in the judiciary in post-communist states that judicial reforms have merely been partially successful. She highlights that judicial reforms have primarily failed to address what can be called a "culture of informality" and which has been transferred from communism. Her study includes insights from 360 elite in-depth interviews conducted in Bulgaria, Romania, Czech Republic, and Slovenia. The author shows how people's understanding of the rule of law is determined by their pre-transition experiences, how informal practices manifest themselves in the judiciary, and the personal exposure to contacts and informal networks. Moreover, she focuses on public and elite trust in courts

and determined that trust in Romanian courts remained quite stable between 1998 and 2002.

The second domestic hypothesis takes the peculiarities of public opinion and levels of trust in Romania into account. Mungiu-Pippidi (2010) remarks that the population of Romania may be seen as an ally of the EU that wants to see the corrupt practices of its judiciary changed. In this context, Parau states that the Romanian judiciary is still undermined by its own venality and it does not take much to bribe a Romanian judge (Parau 2009, 23). In addition, problems with compliance of the rule of law (e.g. independence of judiciary and minority rights) shape the characteristics of the legal culture and therefore have indirect leverage on the levels of public trust in the judiciary. Thus, public opinion values and levels of public trust in the judiciary play a crucial role in order to strengthen the institution. The articles by Uslaner, Tonoyan, Rose-Ackerman, and Grødeland highlight the importance of public trust by applying different methodological and theoretical approaches. Creating a sense of fairness by complying with the rule of law and improving the efficiency of the judiciary (e.g. length of lawsuit) are vital elements to positively shape the public opinion and eventually build higher levels of public trust.

*H 3: If the public opinion regarding the judiciary in Romania and levels of public trust are low, then the level of judicial corruption should be high in Romania.*

## **2.4 Does EU Membership Conditionality matter?**

“The remarkable increase in the use of conditionality by the European Union in the late 1990s and early 2000, has been matched by a explosion of studies discussing its impact on a variety of countries, policy areas and institutional settings [...]. In previous enlargements, taking on the EU’s rules and regulations, the *acquis*, has been considered more or less sufficient to join. By contrast, in the process of enlarging to the East, the EU has moved from the *acquis* toward a wider set of reform and transformation targets, defined first in the well known Copenhagen criteria from 1993” (European Commission 2004, 3).

In the last decade the research with regard to the impact of the EU on its post-communist candidate countries became a continuously growing and much-noticed research field. According to this the time period since the late 1990s proved to be an era in which the topic of democratic conditionality was widely discussed and further developed in numerous international organizations and institutions. Concerning the research in the EU and the enlargement process the special edition of the *Journal of European Public Policy* named “Beyond conditionality: international institutions in post-communist Europe after enlargement” (European Commission 2004) can be seen as a crucial attempt in the research field to assess the topic of EU conditionality and the “post-accession compliance” in Central- and Eastern European states in depth. In this special edition it was the primary research objective of the scholars to evaluate if the incentive-based conditionality hypothesis is true, first, in order to explain the decreasing influence of international organizations after the Eastern enlargement and, second, to predict the weaker membership incentives.

The special characteristic of the “pre-accession” process in Romania causes its importance as an accession state in the research field of “post-accession compliance” in the new EU member countries. This is also a result of the longer and more difficult transformation compared to other accession countries of the Eastern enlargement (European Commission 2006, 2).

Regarding the literature on EU conditionality, the theory by Schimmelfennig and Sedelmeier (2004) and the study by Pridham (2007) may shed light on the research question if EU efforts became more effective before or after the EU accession. One of the most prevailing problems of the EU's Eastern enlargement has been how to encourage the countries of post-communist Central and Eastern Europe (CEE), to act in conformity with EU-established norms. Compared to other federal systems of government, the EU has limited coercive power and material resources. Thus, the compliance with specific pre-conditions is rewarded with EU membership and may be seen as a behavior-modification strategy best appropriate to the nature of EU governance (Schimmelfennig and Sedelmeier 2005). This approach known as accession conditionality is characterized by the adoption of the *acquis communautaire* by all accession candidate countries.

Pridham states that through the accession period, the two most difficult cases in Romania of the EU's democratic conditionality were judicial reform and corruption. Even though there were some late improvements in both cases, they were seen as an area for continued monitoring and potential sanctions by Brussels after the EU entry in 2007. On the one hand, judicial reform involved not only changing professional structures but also figuring out solutions for a judiciary mainly appointed under the communist system and still subject to political influence. On the other hand, corruption and in particular judicial corruption is another difficult issue which affected different layers of public life in post-communist societies. For the most part, this problem influenced the rule of law and affected other issues of the reform, for example, the administrative and judicial parts (Pridham 2007, 177).

An important theoretical approach in the field of EU conditionality is the external incentives model by Schimmelfennig and Sedelmeier which is based on a rationalistic bargaining model. This approach assumes benefit-maximizing and goal-instrumental



parties. Aiming at maximizing their benefits, parties share information, threats, and promises regarding their preferences in the bargaining processes. The result of the bargaining process depends on the relative bargaining power of the parties and on the cost-benefit calculations. The bargaining power is the result of the asymmetrical distribution of information and the benefit from special agreements compared with the benefit from alternative results or external options. In general, the parties with the most profound information try to manipulate the results in their own interest. Furthermore, parties who are less dependent on the agreement may refuse to cooperate and have the opportunity to articulate threats. This may lead to concession from the other party. The external incentives model builds on the bargaining strategy of reinforcement through rewards. Thus, a candidate country will experience support and a gradual connection to the EU. If the required steps are implemented the candidate country will finally receive the rewards. The EU offers non-member states two kinds of rewards: (1) supporting programs (e.g. PHARE program) and (2) institutional linkage (Schimmelfennig 2005).

I suppose that verifying hypothesis 1 cannot adequately reply to the question whether or not EU efforts were more effective before or after the EU accession. I believe that a much more nuanced answer should and actually can be offered. Derived from the EU conditionality literature and the external incentives model by Schimmelfennig and Sedelmeier the fourth hypothesis claims:

*H 4: The EU has greater leverage over aspirant countries before, rather than after, the EU accession. Hence, the EU had more power before accession to reinforce its intention in fighting judicial corruption than after the Romanian accession of 2007. To put it another way, the post-monitoring external pressures are less effective than before membership. Thus, this implies that the EU actually has weak legal controls over its own member states or at least weak control over their courts.*

## **2.5 Additional Factors: Transparency, Accountability, Equality, and Independence**

Two complementary studies by Rose-Ackerman (2007) and Buscaglia and Dakolia (1999) identify four further factors (transparency, accountability, equality, and independence), which should be considered when it comes to the explanation of the causes of judicial corruption in Romania. Although I do not derive any further hypothesis from these articles, I think that it is important to expound the main arguments for these articles to give a comprehensive overview about the specialized literature. Rose-Ackerman (2007) comments that independence is necessary but not sufficient. An independent judiciary might itself be irresponsible or corrupt. If judges operate with inadequate outside checks, they may become slothful, arbitrary or venal. Thus, the state must protect judicial institutions from improper influence at the same time as it maintains checks for competence and honesty. Judges must be impartial as well as independent. On the one hand, an independent judiciary can be a check both on the state and on irresponsible or fraudulent private actors – whether these are the close associates of political rulers or profit-seeking businesses acting outside the law. On the other hand, independent courts may themselves engage in active rent-seeking. States need to find a way to balance the goals of independence and competence.

Another study provides evidence that accountability, transparency and equality may be crucial aspects when it comes to the explanation of judicial corruption. Buscaglia and Dakolia suggest that in order to prevent corruption, the judiciary must be paid on a par with other organizations, must be held accountable for their decisions both by higher courts and by the general public, and, in order for the public to hold them accountable their actions must be transparent. Where judicial corruption is concerned, inequality takes on certain characteristics; corruption will develop where laws can be applied inequitably. This affects corruption both in the judiciary and in the overall state as well. If a

judge can be counted on to apply laws based on the value of a side payment then there is not equality before the law. In this case, both transparency and accountability are closely tied to ensuring equitable application of the law. It follows that transparency and accountability may impact perceived corruption. For example, the EU has noted that reform efforts in Romania have increased the efficiency of the judiciary but recommends that Romania improve both public access to information and perceived corruption in the judiciary.

I am aware of the fact that it is not possible to equally assess all four hypotheses and therefore the large number of independent variables, which are highlighted in contemporary literature. For this reason, I decided to give a comprehensive and structured overview by highlighting the crucial points of the four hypotheses in the literature review and the subchapter 3.4 about observable implications. Nevertheless, the thesis may contribute to shedding light on a prevalent topic in the EU enlargement literature. Consequently, I proceed with a number of key independent variables in order to assess the fourth hypothesis and to answer the two research questions: (1) Have EU efforts to fight judicial corruption in Romania had a significant impact? (2) Were EU efforts more effective before or after the EU accession?

### **3. Research Design**

This section aims at laying the groundwork for the thesis and therefore explains the research design, which I use for the further proceeding. By applying the method of “process-tracing” (George and Bennett 2005; Gerring 2007; Hall 2009; Pierson 2000) and selecting a case study design (George and Bennett 2005; Holmes 2006), I try to shed light on the research questions. Also, I give an outlook on observable implications

of the four hypotheses. In addition, the fourth hypothesis will be tested in the empirical section.

### **3.1 Operationalization**

“The prudent social scientist, like the wise investor, must rely on diversification to magnify the strengths and to offset the weaknesses, of any single instrument” (Putnam, Leonardi, and Nanetti 1994, 12). While it is difficult to find a simple operationalization for the level of judicial corruption – as the dependent variable – it is worthwhile to use a research strategy that encompasses the “diversification aspect” (Kelemen 2011, 16). I assume that there is no single measure, which is able to assess the level and change of judicial corruption in Romania in an adequate manner. Thus, it is crucial to assess qualitative as well as quantitative indicators in order to evaluate the fourth hypothesis and draw reliable conclusions from the case study.

In order to reach an appropriate diagnosis of corruption in a given society, Alina Mungiu-Pippidi proposes a qualitative strategy (Mungiu-Pippidi 2006, 91). Hence, this paper presents the Romanian case by applying the process-tracing method in order to assess EU efforts to fight judicial corruption in Romania. Furthermore, I aim to move beyond pure generalizations and try to offer an explanation of the conditions under which the level of judicial corruption in Romania changed through EU leverage. In this context, it is essential to consider ethno-centric biases, which are part of many ‘social scientific’ analyses. Moreover, the complexity of social reality – covered by the exceedingly broad concept of ‘corruption’ – needs to be grasped with better conceptual tools. An article by Sebastian Wolf (2011) about the potential dysfunctionalities of anti-corruption data highlights how ambiguous anti-corruption data may both legitimize and delegitimize the fight against corruption.

Rather than using merely the top-down logic of corruption indices or governance indicators, I will also apply a bottom-up perspective and therefore particularly draw attention on disregarded measurement. This approach bears the benefit of capturing a range of informal practices that are ignored or misinterpreted by the recent conceptualization of corruption. However, I have to mention the limitations and difficulties with regard to studying informal practices, which are not entirely different from ones involved in studying corruption by using more traditional methods (Ledeneva forthcoming 2011, 416–9). This may also apply to the case of judicial corruption as a more specific form of corruption. Since there are also unsolved questions of how to measure informal practices, it seems adequate to use scores as well as qualitative data to assess the fourth hypothesis.

### **3.2 Method of Process-Tracing**

By using the process-tracing method, I attempt to identify the intervening causal process between the several independent variables and the outcome of the dependent variable. With process-tracing I have the opportunity to test a wide range of alternative hypotheses besides my main hypothesis. In brief, process-tracing aims at tracing the operation of the causal processes at work in a given situation. Hence, it opens the opportunity to cautiously map the process by exploring the extent to which it coincides with theories from derived expectations about the functionalities of the mechanism. In this context, I examine a wide range of secondary literature and data related to judicial corruption in order to assess if the causal process, which the fourth hypothesis states, is in fact evident in the Romanian case.

### **3.3 Case Study Design**

The concept of the case study comprises a wide variety of characteristics, which define its design in a specific application. Generally speaking, a case study represents an exploratory approach to examine a “bounded system” in depth over time, which itself is defined by its spatial and temporal properties. The “bounded system” may consist of one or multiple cases depending on the goal of inquiry. In this regard the inverse relationship between the number of examined cases and the possible degree of detail of the analysis need to be considered when planning a study.

Another important aspect is the focus of the case study, which reflects both the underlying motivation and the purpose. Here the literature mainly distinguishes between intrinsic and instrumental case studies. Whereas the former depicts a focus on the study of a case for the sake of its unique features, the latter employs a case in order to illustrate an issue or issues, which represent(s) the original focus of the study. If more than one case is studied, it is referred to as collective case study. Although multiple sources of information such as observations, interviews, documents, and audio-visual materials can provide insight to a case, the choice of data collection method should be guided by the intended scope of analysis. The analysis in turn needs to take into account the specific physical, social, historical or economic setting in which the case or cases are embedded in order to provide meaningful conclusions.

In order to be clear about the frame of the research project, it is vital to take the drawbacks and benefits of a case study into account. On the first sight we may argue that it is an immense deficiency of a case study that the results are not generalizable. Caused by the fact that the comparability of important variables is not given, and the control of the basic conditions is not ensured. Resulting from this deficit of the case study, however, we may find an important advantage. It seems possible to get a direct

view on the object of research. Furthermore, a case study produces more specific knowledge about one case (Silvermann 2004, 5). The asset of deepness and density leads to the opportunities of better gathering complex variables and explaining multi-layered phenomenon. Also, this case study is based on a mix of quantitative and qualitative evidence and therefore grounds on multiple data sources.

While choosing the case study as a method, it opens the opportunity to achieve a high level of conceptual validity, or identify and measure the indicators that best represent the theoretical concepts that I intend to assess. Additionally, a single case study allows for looking at a large number of intervening variables and it is possible to inductively observe any unpredicted aspects of the operation of a specific causal mechanism. In addition, I can manage complex causal relations such as equifinality<sup>4</sup>, complex interactions effects, and path dependency by using a case study (George and Bennett 2005, 18–22).

I divide the longitudinal Romanian case into two sub-cases in order to adequately assess the fourth hypothesis. The first case lasts from 2004-2006 and the second case encompasses the time period from 2007-2011. In one case, I will go back further and consider the evaluation reports of GRECO, which are a valuable source and were published for the first time in 2002. While assuming that the level of judicial corruption changes over time and as a result of the EU accession of Romania in 2007, I finally decided to apply the before-after design<sup>5</sup>. Bearing in mind that the most evident challenge for the before-after design is that for most phenomenon of interest (more than one variable changes at a time), it is therefore essential to do process-tracing not just on the main

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<sup>4</sup> Consideration of alternative paths through which the outcome could have occurred George and Bennett 2005, 207.

<sup>5</sup> Putman's 1994 'Making Democracy Work' is a remarkable example for the usage of the before-after research design.

variables of interest that changes at a particular time, but also on the other potential causal variables that changed at the same time. (George and Bennett 2005, 166f.)

### **3.4 Observable Implications**

This section discusses the observable implications of the four hypotheses and does not have the intention to test the hypotheses. It is the main objective of this section to identify observable implications which we may find in the research field today.

#### **3.4.1 Hypothesis I**

*H 1: If EU judicial networks and legal epistemic communities have direct leverage on the judiciary, then EU socialization may strengthen the Romanian judiciary and therefore decreases the level of judicial corruption.*

I suppose that the EU socialization, through judicial networks and legal epistemic communities, may be an impressively influential instrument of gradual, path-dependent and lasting change in the Romanian judiciary. As a less formalized policy instrument, judicial networks and legal epistemic communities may be worthwhile for setting new and higher standards of quality of justice (Piana 2010, 38). If hypothesis I is true, we may observe the following: (1) Romanian judges who participate in EU judicial networks should be less corrupt than judges who refuse to participate in judicial networks; (2) through the narrative process, I may find evidence that efforts and examples show that several Romanian judges are successful in fighting back judicial corruption; (3) Romanian judges who participate in discussion rounds with legal epistemic communities should be less corrupt, than the judges who refuse to participate in these discussions; and (4) if socialization of legal and political elites takes place and displays some continuity, then I may argue that we can prove socialization to be effective in the judicial field.



### 3.4.2 Hypothesis II

*H 2: As long as elites from the communist era maintain important positions in political parties and in the judiciary, there will be no real changes with regard to fighting judicial corruption in Romania.*

If this hypothesis is true, I would expect that there is no real decrease and significant improvement in the judicial corruption outcome because elites from the communist era maintain important positions. (1) The generational aspect may play a vital role, which could show how legacy of communism still affects the level of corruption in the judiciary. Most often younger judges may tend to avoid evident forms of corruption as for instance taking bribes since they have worked much harder and do not want to accept a risk. In this context, younger judges with less communist ties should be less responsive to corruption, than older ones. (2) Due to the fact that political and legal elites, who have been part of the communist party and still have communist ties, maintain their positions, it should be observable that they try to use their leverage to direct reforms for their own good. Hence, judicial corruption may play an important role to reinforce this plan out of material incentives. This would confirm that legacy of communism is a key domestic variable. (3) The political constellation with the governing and opposition parties is another aspect, which should be taken into account, while looking for observable implications. The landscape of political parties and especially the party coalition in office may affect the policy-making with regard to the judiciary and therefore has direct or indirect leverage on judicial corruption. Thus, governing politicians, who are part of the post-communist party, may put various kinds of pressure on judges in order to reach their aims in an unpleasant manner. If there are also politicians from opposition parties involved in corrupt actions, trying to put pressure on judges, then the hypothesis would be challenged and must be partially rejected.

### 3.4.3 Hypothesis III

*H 3: If the public opinion regarding the judiciary in Romania and levels of public trust are low, then the level of judicial corruption should be high in Romania.*

The third hypothesis tests the relationship between the level of public trust and public opinion on judicial corruption. It may be a problem of generalizability that this hypothesis is seeking to project individual perceptions onto the overall population of Romania. Nevertheless, it is the sum of individual preferences that determines the functionality of the judiciary. If a majority of the population notices the judiciary to be corrupt, judicial legitimacy will be in question in spite of the support of the minority. To put in another way, if a minority of the population notices the judiciary to be corrupt most of the time the overall judiciary will still be admitted as legitimate. (1) Survey data may offer insights regarding the public opinion about the performance and the accountability of judiciary. Some parts of the surveys may show that corruption is one of the crucial factors, which explains, why the level of trust in judiciary is fairly low. (2) If there are shifts in public opinion surveys, then there should be also shifts in rule of law, impartiality of judiciary, and judicial framework and independence. (3) The more opportunities the public has to participate in the judicial process the more they can observe how the judiciary works. Thus, the public may function as an informal monitoring tool and may influence or even hamper the corrupt practices in the Romanian judiciary. (4) If the judicial process is not transparent for the public, then public opinion and levels of trust might be low and it can be assumed that the judiciary tries to hide its corrupt actions. If the press supplies information about trials, decisions, and actions of the judiciary on a regular basis, then the probability that levels of trust increase will rise and judicial corruption may decrease because of the public pressure. (5) Low trust in the judiciary implies that the judiciary is

not functioning as it should. To put it another way, the problem may be caused by the judiciary itself.

#### 3.4.4 Hypothesis IV

*H 4: The EU has greater leverage over aspirant countries before, rather than after, the EU accession. Hence, the EU had more power before accession to reinforce its intention in fighting judicial corruption than after the Romanian accession of 2007. To put it another way, the post-monitoring external pressures are less effective than before membership. This implies that the EU actually has weak legal controls over its own member states or at least weak control over their courts.*

In addition to the first three hypotheses it is crucial to consider EU conditionality as a potential influencing factor. (1) If scores related to corruption and judicial framework and independence show a significant increase before the EU accession of 2007, I would argue that the EU membership conditionality and political and material incentives have stimulated the Romanian efforts to implement the EU standards and eventually reduce the level of judicial corruption. (2) Contrarily, if the evidence from scores shows that there was no significant improvement with regard to corruption and judicial framework and independence before 2007, I would assume that the EU conditionality and its incentives were not strong enough to convince Romanian elites to implement adequate judicial reforms, which aim at fighting judicial corruption. (3) If the implementation rate of new policies is high and more than paying lip service before the accession, then I would suppose that EU efforts have a significant impact. Here, the GRECO reports may be a reliable source for the analysis. (4) By assessing the EU progress reports and NIT reports, I may find evidence that the Romanian efforts to fight judicial corruption have been hampered or even declined after the EU accession in 2007. This would imply that with

the loss of important political and economical incentives, EU efforts have been weakened.

## **4. Empirics**

This section aims at testing the fourth hypothesis about EU conditionality, which I have derived from the theoretical part (chapter 2) of the thesis. In a first step, I will analyze the EU progress reports from 2004 to 2006 and from 2007 to 2011 with regard to judicial reforms and judicial corruption. Thereby, I will have the opportunity to look closer at the phenomenon of judicial corruption. Secondly, I will continue with the evaluation of NIT reports, GRECO reports and analyze NIT scores related to judicial corruption as well as the CPI score. Here, I may find further evidence for the impact of EU efforts to fight judicial corruption in Romania before and after EU accession.

### **4.1 Analysis of the EU Progress Reports (2004-2011)**

In the Agenda 2000, the EC agreed to inform the European Council about the progress of the accession preparation in the central and eastern European candidate countries. Also, the 'Roadmaps for Bulgaria and Romania' (2002) determined the further proceeding of the accession. In the case of Romania, this document can be seen as an important cornerstone that scheduled the main actions for the following years in order to be prepared for EU membership. These actions were based on obligations, which were discussed and finally agreed on in negotiations in order to fulfill the membership criteria. The actions mainly emphasized the administrative and judicial capacity with regard to the implementation of the *acquis communautaire* and the economic reforms.

The further analysis of the EU progress reports will mostly focus on the judicial reform and the fight against judicial corruption. The advantage of the EU progress reports is that they are annually published and therefore explicitly monitor and assess the progress in Romania from the perspective of the EU. To put in another way, with these reports it is possible to glean further evidence and analyze the content with regard to the progress that has been made in the judicial sector and the fight against judicial corruption. Being aware of a potential ethno-centric bias in the EU progress reports, the reports are merely one source of documents which are used for the analysis.

#### **4.1.1 EU Progress Reports: 2004-2006**

In general, the 2004 EU progress report states that Romania has achieved some progress. By driving forth comprehensive reforms in the sectors of fighting corruption and judiciary, Romania strengthened its democratic and constitutional system. Furthermore, the implementation of the reforms and existing legal acts should be brought into focus (European Commission 2004, 170). In the judiciary the processing of litigations and the quality of the sentences must be improved. Also, the independence of the judiciary from the executive branch has to be ensured. However, we can remark that Romania has made some judicial and organizational progress since the 2003 EU progress report. The sector of fighting judicial corruption is still a serious and far-reaching problem, which has to be solved in upcoming years. The legal acts of the EU to fight corruption, which include the fight against judicial corruption, are overall well-developed. However, the ability to contain is based on the effective application (European Commission 2004, 33).

The 2005 EU progress report highlights that the newly elected government has accepted a revised strategy and an action plan to reform the judiciary by 2007. This was a vital step for the creation of a professional, independent and effective judiciary (Prid-

ham 2007, 250). The EC pointed out that it was now essential to monitor the implementation because there were reports about integrity problems in earlier years. In the course of the preparation of the EU accession the fight against corruption is now a primary objective. The gained insights from an evaluation by a non-profit organization, which analyzed the strategy to fight corruption from 2001 to 2004, were embedded in the new strategy as well as in the 2005-2007 action plan.

The 2006 EU progress report showed that there are still problems in the judiciary and fighting corruption, which have to be solved. As in previous years, Romania also made some progress in 2008. Thus, the resources for the judiciary increased and the working conditions in the courts improved. Nevertheless, there have to be further efforts to achieve sustainable improvement in the judiciary. Hence the code of criminal procedure should be further tightened. The highest judicial council should reinforce its efforts to support a consistent interpretation of law and the evaluation of the quality of litigations. Moreover, the courts and public prosecution departments should use their resources more efficiently. In fighting judicial corruption on the highest level, Romania has to continue with its effort in order to consolidate and expand the already achieved progress in this field. Besides, the implemented reforms by the ministry of justice and the directorate for fighting corruption, there have to be effective efforts by all other state institutions. Only this condition will ensure the irreversibility of the effected progress (European Commission 2006, 6f.).

Apart from this, the 2006 EU progress report refers to the accession treaty (2005), which intends to introduce a safeguard clause for up to three years starting from the accession, if Romania is not able to fulfill the obligations in the field of judicial cooperation. In the case that the reform of the judicial system in Romania has not made sufficient progress by the EU accession date or that fighting corruption in the judiciary has not led to considerable results, the EC may implement a mechanism to monitor this sec-

tor even after the accession. Here, article 38 of the Act of Accession would apply (European Commission 2006, 10).

#### **4.1.2 EU Progress Reports: 2007-2011**

The introduction of control mechanisms for governance standards for the phase after the accession was a new element of the cooperation, which was a decision of the EC in December 2006 and implemented in the implementation in January 2007. In particular, this mechanism was tailored for Romania. Thus, the EC established the CVM, which introduced the benchmarks to fight corruption and implement the judicial reform. Also, the EC intended to use the CVM to measure the progress in Romania. On the one hand the mechanism aimed at preventing the mitigation of influence of the EU after the EU accession of Romania. On the other hand the mechanism sought the goal to maintain the incentives and reinforce the credibility of the EU in order to give the reform efforts of Romania an even more sustainable basis.

The 2007 EU progress report demonstrates that within the frame of the CVM the steps were fulfilled with different success. Despite some progress regarding the judicial reform and fighting corruption there is still need for action. Thus, it is still hard to determine concrete results. Although the necessary draft bills, action plans and policies were prepared, they have yet to be implemented. In the area of the judicial reform, we can state that Romania made good progress with regard to civil procedures rules. Comparing this to criminal trial law, Romania made less progress. In order to complete the organizational reforms of the judicial sector in a satisfactory manner, further efforts are indispensable. By 2007, the reforms were partially implemented. Hence, the EC concludes that Romania has made some progress when it comes to the implementation of judicial reform. However, the reform efforts to reduce high-level corruption through judicial treatment were insufficient (European Commission 2007, 5ff.). As an incentive to imple-

ment the objectives, which were phrased before the accession, the EC comes up with some follow-up actions. For instance, one of these actions was the continuing support of the architecture of the institutional structures. In addition, the EC invites the other EU member states to keep on supporting Romania in a practical manner (European Commission 2007, 23f.).

In July 2008 the EC announced the yearly EU progress report for Romania in the context of the CVM. The report critically reflects the developments in the sector of judicial reform, prosecution of high-level corruption as well as corruption on the municipal level. The EC concludes that with the appointment of a new minister of justice (Catalin Predoiu), Romania reinforced its reform orientation since the last interim report in February 2008 (Trauner 13, 10). In the sector of judicial reform, the EC remarks the improvement regarding the material and personnel situation in the Superior Council of Magistracy (SCM). However, it has not yet consistently exercised its full mandate. So far the SCM is quite slow in coming to management and disciplinary decisions. The sanctions it imposes are often inconsequential.

“Romania has also made progress with the establishment of the National Integrity Agency (ANI). Since the Commission's last assessment in February, ANI has recruited core staff and started to investigate cases. It is too early to accurately judge its performance on cases and the quality of its decisions (e.g. on sanctions). It is likewise too early to judge if the legal mandate of the National Integrity Agency is sufficiently robust. The supervisory role of the National Integrity Council can only be judged on the basis of its future track record” (European Commission 2008, 5).

Regardless of good progress on the investigative side, Romania can show not many concrete results in fighting high-level corruption. “No real progress has been made in ten key cases involving former ministers” (European Commission 2008, 5). The unwillingness of the judiciary and Parliament to allow investigation of these profile cases results in a loss of public confidence. Thus, the fight against corruption needs to be depoliticized and Romania must confirm its indisputable commitment to fight against high-level corruption. Independent investigation of former ministers and members of Parlia-



ment by the judicial authorities have to be allowed in order to bring back public confidence in the fight against corruption and in respect for the rule of law (European Commission 2008, 5ff.).

The 2009 EU progress report notices that the Romanian judiciary has made progress; however, these gained improvements need to be intensified and better implemented in order to be more sustainable. From the EC's point of view the conditions for activating the safeguard clause are not given. Nevertheless, Romania remains to be monitored through the CVM. The interim report in February 2009 has criticized the slowdown of the reform efforts (Trauner 13, 11). To the contrary, the EU progress report 2009 states that the reform impulses are fostered again but the de-politization of the judicial system has to go on in order to sustainably strengthen the reforms. Through an increasing number of legal acts, which result from the continuing disputes between the political parties, the main goal of the implementation of an independent and stable judiciary recedes into the distance. Also, the EC presents a list of 16 recommendations. In this regard, the EC addresses the vital improvement of transparency and accountability of the SCM. With regard to high-level corruption, the EC recommends the establishment of a stable legal framework to fight this kind of corruption. These recommendations show that the EC has also identified the problem of judicial corruption. Furthermore, the EC does not only highlight the shortcomings but also provides recommendations in order to reinforce its credibility to help implement the reforms in Romania (European Commission 2009b, 7ff.).

The 2010 EU progress report points to vital progress in Romania in adopting the Civil and Criminal Procedure Codes, but also to significant deficiencies in Romania's effort to achieve progress within the CVM. With regard to fighting corruption the majority of the recommendations made in June 2009 by a joint working group related to inconsistency and leniency of corruption litigations are being addressed but not yet effectively

implemented (European Commission 2010, 7). In general, the report highlights the fact that Romania had not demonstrated sufficient political commitment to reform. Merely limited progress has been made since the EC's last report in improving the efficiency of the judicial process and the consistency of jurisprudence.

Also, the leadership of the judiciary appeared on some occasions unwilling to cooperate and take responsibility for the benefit of the reform process. Despite the fact that pragmatic solutions are available in many cases, they are often not taken up, while initiatives of individual magistrates, professional associations and civil society try to close this gap. In this context, the EC appeals to Romania to set up close and valuable cooperation between the diverse political and judicial actors and to reinforce the commitment of the judiciary to reform. In addition, the report recommends Romania to immediately correct these shortcomings and deficiencies related to accountability and disciplinary procedures in order to regain momentum in the reform process (European Commission 2010, 3f.). This description of the situation may imply that the judiciary in Romania aims at slowing down the reform process in order to maintain the "old" structures of the system. This may be an indication that judicial corruption is still common practice in the Romanian judiciary.

The 2011 EU progress report stresses the significant steps that Romania has taken since the last annual report of 2010. Hence, Romania re-established the legal basis of the ANI, improved judicial efficiency, continued preparations for the implementation of four new codes, launched preparations for a functional review of the judicial system and carried out an impact analysis of its anti-corruption policy. Nevertheless, the report emphasizes that progress in fighting corruption still needs to be pursued and should remain a top priority with support from Parliament (European Commission 2011b, 7). The results by the courts, however, continue to show a mixed picture. Even though the majority of high-level corruption trials are decided within a period of three years, a

considerable number of important cases involving dignitaries are recently pending before courts for more than three years. Several of these cases have already reached the statute-barred period in full or in part and numerous other cases approach these deadlines (European Commission 2011b, 5). This may be another indication which shows that judicial corruption is still prevalent and judges may be influenced by dignitaries' environment.

#### 4.1.3 Discussion of the Results

In this subchapter I will discuss the main findings of the EU progress reports. Focusing on the fight against judicial corruption in Romania, it was the main objective of my research regarding the EU progress reports to identify the milestones which may show both the EU efforts to fight judicial corruption in Romania and subsequent significant impact on judicial corruption (see tables 1 and 2).

| Year of Report | Milestones of EU progress reports<br>(Judicial Corruption)   |
|----------------|--|
| 2004           | <ul style="list-style-type: none"> <li>• Independence of the judiciary towards the executive branch has to be ensured.</li> <li>• Legal acts to fight judicial corruption are overall well-developed; ability to contain depends on the effective application.</li> </ul>  |
| 2005           | <ul style="list-style-type: none"> <li>• Revised strategy and action plan 2005-07 to reform the judiciary =&gt; vital step for the creation of a professional, independent and effective judiciary.</li> <li>• Primary objective in the course of the preparation of the EU accession: Fighting corruption.</li> </ul>   |
| 2006           | <ul style="list-style-type: none"> <li>• Still problems in the judiciary and fighting corruption.</li> <li>• Resources for the judiciary increased and the working conditions in the courts improved.</li> <li>• The code of criminal procedure should be tightened to achieve sustainable improvement in the judiciary.</li> <li>• Courts and public prosecution department should use their resources more efficiently.</li> </ul> |

Table 1: Analysis of EU progress reports between 2004 and 2006 (Romania)

| Year of Report | Milestones of EU progress reports (Judicial Corruption)  |
|----------------|--|
| 2007           | <ul style="list-style-type: none"> <li>• Implementation of CVM in January 2007 =&gt; first steps of CVM differently fulfilled.</li> <li>• Draft bills, action plans and policies prepared but not yet implemented.</li> <li>• Judicial reforms partially implemented.</li> <li>• Reform efforts to reduce high-level corruption through judicial treatment were insufficient.</li> </ul>   |
| 2008           | <ul style="list-style-type: none"> <li>• Reinforcement of reform orientation.</li> <li>• Improvement regarding the material and personnel situation in the SCM.</li> <li>• SCM quite slow in coming to management and disciplinary decisions; sanctions are often inconsequential.</li> <li>• Unwillingness of the judiciary and Parliament to allow investigations of the profile cases results in a loss of public confidence.</li> <li>• Fighting corruption needs to be de-politicized and Romania must confirm its indisputable commitment to fight against high-level corruption.</li> </ul> |
| 2009           | <ul style="list-style-type: none"> <li>• Judiciary achieved progress =&gt; these gained improvements need to be intensified and better implemented in order to be more sustainable.</li> <li>• Increasing number of legal acts =&gt; main goal of the implementation of an independent and stable judiciary recedes into the distance.</li> <li>• EC list of recommendations =&gt; evident that the EC has also identified the problem of judicial corruption.</li> </ul>  |
| 2010           | <ul style="list-style-type: none"> <li>• Majority of the recommendations made in June 2009 are being addressed, but not yet efficiently implemented.</li> <li>• Limited progress has been made since the EC's last report in improving the efficiency of the judicial process and the consistency of jurisprudence.</li> <li>• Leadership of the judiciary appeared on some occasions unwilling to cooperate and take responsibility for the benefit of the reform process.</li> </ul>   |
| 2011           | <ul style="list-style-type: none"> <li>• Romania re-established the legal basis of the ANI, improved judicial efficiency, continued preparations for the implementation of four new codes, launched preparations for a functional review of the judicial system and carried out an impact analysis of its anti-corruption policy.</li> <li>• Courts show mixed picture; a significant number of important cases involving dignitaries are recently pending before courts for more than three years. =&gt; Some reached statute-barred status.</li> </ul>   |

Table 2: Analysis of EU progress reports between 2007 and 2011 (Romania)

With the 2011 EU progress report and therefore four years after the EU accession, the situation in Romania shows a diverse picture. Derived from the analysis, we may argue that Romania did not manage to adopt the average EU level in the judiciary regarding capacity and ability to act. Also, the fight against judicial corruption stagnated from time to time. Although temporary reform efforts were apparent, Romania could not disentangle itself from the ambivalent constitution and fights even today against the only partially revised civil and criminal law. With that said, Romania's jurisdiction pronounced inconsistent sentences several times. Concerning the membership conditionality we may state that the EU was able to put pressure on Romania before accession. This leverage

was a product of the size of the financial aids for the EU accession as well as the credibility of the EU conditionality. Due to deficiencies in the judiciary and fighting corruption, which were not fixed until the EU accession in 2007, the EU lost an effective tool to put direct and permanent pressure on Romania and its judiciary. Thus, the external incentives remained rather weak. Related to the external incentives model we may suppose that the gap between transposition and implementation continues to exist. In other words, transposition takes most often place under the pressure of membership conditionality and not self-paced.

The second part of the research question asks if EU efforts become more effective before or after the EU accession. The accession reports between 2007 and 2011 clearly show that despite of the absence of pre-accession EU conditionality, this must not implicitly lead to a permanent disconnection if effective and alternative mechanisms to support the rule transfer and compliance are developed. The introduction of post-accession benchmarks and the strengthening of the monitoring process can be seen as the logical steps in the development of EU enlargement policy based on the lessons learned from prior experiences. As we have seen in the analysis of the EU progress reports, the growing application of targeted and differentiated conditionality confirms the value of the EU's improved approach towards establishing conditions and monitoring compliance.

After Romania's accession in 2007, the EU lost its attractive accession advancement rewards and could merely rely on explicit threats to induce compliance. The limited penalizing power of the remedial and preventive sanctions, however, established in the framework of the CVM produced a very weak negative incentive structure, which had a decreasing effect on the effectiveness of post-accession conditionality (Gateva 2010, 21). Related to the fourth hypothesis, the results from the EU progress reports confirm that post-monitoring external pressures are less effective than before member-

ship. In this case it seems evident that the EU has weak legal control over the Romanian courts when it comes to the implementation of tools to fight judicial corruption.

Furthermore, the analysis of the EU progress reports shows that the so-called safeguard clause may be an adequate tool to put pressure on Romania in order to strengthen the reform efforts. In this context, the EU can withhold payments from the EU budget if Romania does not achieve its objectives. Also, it is possible to file a lawsuit if Romania commits an infringement (Schimmelfennig 2004, 268). If we critically reflect the need of the safeguard clause, we may ask why the EU apparently needs this kind of mechanism, although Romania has to comply with EU primary and secondary law after the EU accession. Thus, the need to have a safeguard clause to monitor EU member states seems to be paradox in some ways and the effectiveness to achieve a higher degree of compliance in new member states may be not as strong as supposed in theory.

#### **4.2 Analysis of NIT documents, CPI and GRECO reports**

This section seeks to find further evidence to test the fourth hypothesis. By analyzing the NIT reports from 2004 to 2011, the corruption perception index from 2004 to 2010 and the GRECO reports from 2002 to 2009, we may find vital points, which could help us to answer the research question. Bearing in mind that I apply the before-after design for the case study, I have to mention that the corruption perception index for 2011 was not yet available. Using the GRECO reports may seem unusual on the first sight. However, the evaluation of the GRECO recommendations and its implementation may help us to answer the second part of the research question which asks if EU efforts become more effective before or after EU accession. In this context, the GRECO reports

can be seen as an added value because they have been compiled by the anti-corruption body of the CoE and not by the EU.

#### **4.2.1 Analysis of the Nations in Transit Reports (2004-2011)**

This subchapter focuses on the analysis of NIT reports between 2004 and 2011 regarding judicial framework and independence as well as corruption. Concentrating on these two categories of the survey, I try to find further evidence for answering the question of whether EU efforts to fight judicial corruption in Romania had a significant impact and if EU efforts have become more effective after the EU accession. First of all, I will present the scores of these two categories. Secondly, I will analyze the NIT reports in detail. Because of the fact that the NIT report 2007 evaluates the year 2006, I divided my analysis in 2004 to 2007 and 2008 to 2011. Thirdly, I discuss the main findings of the analysis.

The NIT report, published once a year by Freedom House, is a comprehensive, comparative, multidimensional study focusing on 29 countries and administrative areas from Central Europe to Eurasia. Country reports and rating tables are presented for the following categories: democracy, civil society, corruption, electoral process, governance, judicial framework and independence and media.

The NIT report can be seen as an example of centralized expert assessment of corruption. Merely a small number of experts influence the final ranking. On the one hand, we argue that this might result in greater inter-observer-reliability; on the other hand the small number of experts may cause an ethno-centric bias. Nevertheless, the survey can be a valuable supplement if the methods are applied in a reliable and valid manner. Also, the survey is written in an essay format and therefore allows the report authors to provide a broad analysis of the progress made in a particular subfield in their country of expertise. The NIT is publicly available and therefore publicizes most of its

information about its sources, assessment criteria and surveying methodology compared to other surveys, which do not provide full information. While the NIT is quite politically-oriented and biases are intrinsic to expert assessment, I analyze not only the value of the scores (judicial framework and independence and corruption) but also focus on the description and analysis in the annual NIT reports (Ledeneva forthcoming 2011, 390f.).

#### **4.2.1.1 NIT Scores: Judicial Framework and Independence and Corruption**

| Year | Judicial Framework and Independence | Corruption |
|------|-------------------------------------|------------|
| 2004 | 4,25                                | 4.5        |
| 2005 | 4                                   | 4.25       |
| 2006 | 4                                   | 4.25       |
| 2007 | 3.75                                | 4          |
| 2008 | 4                                   | 4          |
| 2009 | 4                                   | 4          |
| 2010 | 4                                   | 4          |
| 2011 | 4                                   | 4          |

Table 3: NIT scores between 2004 and 2011 (Romania)

The scores presented above in table 3 are provided by a panel of academic advisers and a group of regional expert reviewers in consultation with the report authors. The scores are based on a scale of 1 to 7, with 1 representing the highest and 7 representing the lowest level of democratic progress. The scores follow a quarter-point scale. Minor to moderate developments typically warrant a positive or negative change of a quarter point (0.25), while significant development warrant a half point (0.50). It is rare for any category to fluctuate more than a half point in a single year (Freedom House 2011a, 12).

First, judicial framework and independence highlights constitutional reform, human rights protections, criminal code reform, judicial independence, the status of ethnic



minority rights, guarantees of equality before the law, treatment of suspects and prisoners, and compliance with judicial decisions. Secondly, corruption looks at public perceptions of corruption, the business interests of top policymakers, laws on financial disclosure and conflict of interest, and the efficacy of anti-corruption initiatives (Freedom House 2011a, 12).

Regarding the judicial framework and independence, the result of table 3 clearly portrays that there was a moderate increase (-0.25) in 2007, the EU accession year of Romania. However, this is only a moderate positive development, which is not significant at all. The time period between 2008 and 2011 shows no significant decrease in the scores compared to the time before 2007, which means that the results of the scores imply that the situation did not improve. Concerning the corruption score, the result demonstrates that there was a moderate decrease (+0.25) in 2007. During 2004 and 2011 the score remained quite constant. Thus, evidence from these two scores suggests that there was no significant improvement with regard to corruption and judicial framework and independence before 2007. Consequently, we may assume that EU conditionality and its political and material incentives were not strong enough to convince Romanian elites to implement adequate judicial reforms, which aim at fighting judicial corruption. Nevertheless, we have to be careful with the interpretation of these scores because of the limited validity. Thus, it is worthwhile to also consider the descriptive part of the NIT reports.

#### 4.2.1.2 NIT Reports: 2004-2007

| Year of Report | Milestones of NIT reports  |
|----------------|--|
| 2004           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>Judicial reform in 2003: No decision on the mechanism for appointing judges to the SCM.</li> <li>Romanian courts are weakened by low budgets and excessive property lawsuits resulting from contradictory restitution legislation.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>Important legislation was passed in 2003 to fight corruption and regulate conflicts of interest.</li> <li>The perception of judges as highly corrupt has been steady for years.</li> <li>Implementation of corruption measures remain the main challenge (Freedom House 2004, 11–5)</li> </ul>  |
| 2005           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>Romania judiciary continues to transition, with most institutions overhauled by legislative changes in 2004.</li> <li>SCM is to assume full responsibility for the recruitment, career development, and sanction of judges and prosecutors.</li> <li>By the end of 2006, all cases should also be allocated to judges on a random basis by an automated system.</li> <li>Independent judiciary: The minister of justice may no longer appoint judges directly or promote magistrates to higher courts, prosecutors' offices, or management positions in the SCM.</li> <li>A 2004 referendum ordered by the Ministry of Justice found that majority of judges had come under political pressure while exercising their official duties.</li> <li>Access to justice is perceived as uneven by citizens, who overwhelmingly agree in surveys that some people are above the law.</li> <li>Courts struggle to improve their professionalism =&gt; quality of judgments remains a problem.</li> <li>Heavy workload of judges, their limited access to case law, a lack of information about new legislation, poor circulation of information within the judicial system, and a lack of training and specialization explain these shortcomings.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>Judiciary has remained captured by oligarchic networks.</li> <li>In 2004, the Romanian government made some efforts to improve the regulatory framework of anti-corruption. (Freedom House 2005, 14–8))</li> </ul> |
| 2006           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>Judicial reform made important strides in 2005. Revised strategy and action plan 2005-07 to reform the justice system.</li> <li>Introduction of safeguard clause regarding the EU accession at the December 2004 European Council provided serious impetus, as reform of the judiciary is a top EU priority.</li> <li>Revision of the 2004 three-law package: the package retained many positive elements, and the legal framework now offers sufficient guarantees for magistrates' personal and institutional independence, although accountability mechanisms are still frail.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>In 2005, Romania enjoyed a cleaner central government and passed more effective anti-corruption plans and laws. But little progress was achieved in practice. (Freedom House 2006, 6–10)</li> </ul>  |
| 2007           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>During 2006, improvements continued in the Romanian judicial system based on 2004 reform legislation, but built-in problems also continued to show.</li> <li>SCM in control of judge recruitment and advancement as well as providing a check on most legislation. Corruption and malpractice within the ranks of magistrates is widely denied.</li> <li>The main association of magistrates protested against newly introduced legal provisions making judges financially accountable for mistakes they make in their rulings.</li> <li>Distrust in the judiciary remains high; Court support staff creates part of the problem, as they receive low salary and poor training; Consistent interpretation and application of the law at all levels of the courts throughout the country have not yet been fully achieved, though steps have been taken.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>Romania ranked "strong" on anti-corruption policy at Global Integrity Index yearly evaluation, receiving praise as one of the countries enjoying the best anti-corruption arsenal in the world. Domestic polls show that people still expect this arsenal to deliver more corruption culprits. (Freedom House 2007, 570–4)</li> </ul>  |

Table 4: Analysis of the NIT reports between 2004 and 2007 (Romania)

Table 4 presents the milestones of the NIT reports related to judicial framework and independence as well as corruption in the years between 2004 and 2007. The 2004 NIT report notes that the perception of judges as highly corrupt has been steady for years. Furthermore, the implementation of corruption measures remains the main challenge and Romanian courts are weakened by low budgets and excessive property lawsuits resulting from contradictory restitution legislation. As a result, the 2004 NIT report states that Romania still has a long way to go in order to improve the situation in the judiciary and eventually fight judicial corruption.

The 2005 NIT report remarks that the courts have to improve their professionalism and therefore quality of judgments remains a problem. Two questions are asked in the report which may help to indirectly assess the status of judicial corruption in Romania. (1) Do judges have an adequate legal training before assuming the bench? (2) Do judges rule fairly and impartially, and are courts free of political control and influence? By answering these questions, the 2005 NIT report shows that judicial corruption is still prevalent. (1) Heavy workload of judges, their limited access to case law, a lack of information about new legislation, poor circulation of information within the judicial system, and a lack of training and specialization explain these deficiencies. (2) Access to justice is perceived as uneven by citizens, who overwhelmingly agree in surveys that some people are above the law. Finally, the 2005 NIT report highlights that the Romanian judiciary has remained captured by oligarchic networks which may hamper the fight against judicial corruption. Besides, the Romanian government made some efforts to improve the regulatory framework of anti-corruption in 2004. Regarding the independence of the judiciary, the minister of justice may no longer appoint judges directly or promote magistrates to higher courts, prosecutor's offices, or management positions in the SCM.

The 2006 NIT report remarks that the judicial reform made important strides in 2005. The revised strategy and the 2005-07 action plan to reform the justice system and

the safeguard clause regarding the EU accession provide serious impetus that the reform of the judiciary is a top EU priority. Related to the question about the effective implementation of anti-corruption initiatives, Romania passed more effective anti-corruption plans and laws in 2005; but little progress was achieved in practice.

The 2007 NIT report highlights the improvements that Romania has made based on the 2004 reform legislation during 2006. Nonetheless, built-in problems continued to exist. Also, consistent interpretation and application of the law at all levels of the courts throughout the country have not yet been fully achieved, though steps have been taken. This opens the opportunity to manipulate lawsuits and therefore gives judicial corruption a chance to be used in some cases. With regard to the Global Integrity Index, the 2007 NIT report remarks that Romania got ranked “strong” on anti-corruption policy as one of the countries with the best anti-corruption arsenal in the world. However, distrust in the judiciary remained high and domestic polls have shown that people still expect this arsenal to deliver more corruption culprits.

### 4.2.1.3 NIT Reports: 2008-2011

| Year of Report | Milestones of NIT reports  |
|----------------|--|
| 2008           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>• The Romanian justice system and the government's anti-corruption efforts remained under close EU monitoring even after accession and were evaluated against a number of benchmarks set by the EC.</li> <li>• The capacity of the SCM to ensure both accountability and control of magistrates has been one of the main concerns of the EC.</li> <li>• Romanian civil society complains about the lack of transparency of the SCM.</li> <li>• Quality of courts remains poor, and litigations are seldom predictable.</li> <li>• Quality does not evolve with hierarchy in the Romanian judiciary, and sometimes the reverse is true. For instance, most judges recruited after 1989 are still in the lower courts. Appeals courts and the Supreme Court are staffed by numerous Communist-era senior magistrates.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>• There were serious setbacks in Romania's anti-corruption effort in 2007.</li> <li>• In March 2007: Attempted to remove Monica Macovei, an independent justice minister who had shaken up the structure and accountability of the judiciary and the prosecutor's office in order to attack corruption head-on.</li> <li>• Analysis of verdicts in corruption cases shows that penalties are typically not decisive, and in many cases of high-level corruption, judges grant suspended penalties. (Freedom House 2008, 478–83)</li> </ul> |
| 2009           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>• As part of the effort to secure the independence of the judiciary, most powers regarding the selection, career, and control of magistrates passed from the Ministry of Justice to the self-governing judicial council, the SCM.</li> <li>• Lack of transparency is a wide-spread problem in the Romanian court system.</li> <li>• Activities of the action plan for meeting the benchmarks of the CVM fail to address the problem of accountability. No mechanism has been identified for increasing the accountability of the SCM; SCM has constantly denied that corruption is even a problem within the Romanian judiciary.</li> <li>• Judicial system is recently characterized by a lack of predictability and consistency.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>• Civil society has continued to play an effective role in anti-corruption by monitoring officials (Freedom House 2009, 419–22)</li> </ul>  |
| 2010           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>• First strike over judicial salaries took place in September 2009. Through court decisions, the salaries of judges and prosecutors were increased by roughly 65 percent.</li> <li>• Drafts of for codes – the civil code, the criminal code, the civil procedure code, and the criminal procedure code – were submitted to Parliament in late 2008.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>• While some convictions were pronounced by the courts, many high-level corruption cases are still pending.</li> <li>• The CVM criticized the long duration of trials, highlighting the automatic suspension of trials when one party invokes a constitutionality challenge.</li> <li>• 2009: EC decided that, while three-year long safeguard mechanism for Romania came to an end, they would continue to monitor the judicial reform and corruption. (Freedom House 2010, 428–31)</li> </ul>   |
| 2011           | <p><u>Judicial framework and Independence:</u></p> <ul style="list-style-type: none"> <li>• In July 2010, Parliament adopted a new civil and criminal procedure code. Along with a civil and criminal code adopted in 2009, these lay a new foundation for the Romanian legal system and judiciary.</li> <li>• EU also criticized the judicial disciplinary system, citing lenient sanctions and the paucity of cases opened.</li> </ul> <p><u>Corruption:</u></p> <ul style="list-style-type: none"> <li>• Corruption remains a substantial governance challenge in Romania and the country has struggled to meet EU anti-corruption requirements, despite efforts by civil society and a few key institutions to expose, investigate, and punish high-level corruption. (Freedom House 2011b, 448–51)</li> </ul>   |

Table 5: Analysis of the NIT reports between 2008 and 2011 (Romania)

Table 5 presents the milestones of the NIT reports related to judicial framework and independence as well as corruption in the years between 2008 and 2011. The 2008 NIT report notes that even after the EU accession of Romania in 2007 the Romanian justice system and the government's anti-corruption efforts remained under close EU monitoring and were evaluated against a number of benchmarks set by the EC. In addition, the report states that the quality of courts remains poor, and litigations are seldom predictable. Quality does not evolve with hierarchy in the Romanian judiciary, and sometimes the reverse is true. This demonstrates the complexity of the problem and may also be a potential sign for judicial corruption due to the advantageous judicial environment, which may foster judicial corruption. In 2007, there were serious setbacks in Romania's anti-corruption effort. For instance, there was an attempt to remove Monica Macovei, an independent justice minister, who had shaken up the structure and accountability of the judiciary and the prosecutor's office in order to attack corruption in a direct manner. To conclude, the analysis of the 2008 NIT report provides evidence that the Romanian efforts to fight judicial corruption have been hampered or even declined after the EU accession in January 2007. This may be seen as the first signal that implies the loss of vital political and economical incentives of the EU and therefore its efforts have been weakened.

The 2009 NIT report emphasizes that there is a widely-spread lack of transparency in the Romanian court system. Also, a lack of predictability and consistency is highlighted and therefore may enhance judicial corruption. As a part of the effort to ensure the independence of the judiciary, most powers regarding the selection, career, and control of magistrates passed from the Ministry of Justice to the SCM can be seen as an improvement.

The 2010 NIT report notes that the salaries of judges and prosecutors were increased by approximately 65 percent. This could improve the situation related to judicial

corruption due to the underpayment of Romanian judges in earlier years. In addition, the report highlights the criticism by the CVM which criticizes the long duration of lawsuits. In 2009, the EC decided that, while three-year long safeguard mechanism for Romania came to an end, they would continue to monitor the judicial reform and fight against corruption.

The 2011 NIT report stresses that corruption remains a substantial governance challenge in Romania and the country has struggled to meet EU anti-corruption requirements, despite efforts by civil society and a few key institutions to expose, investigate, and punish high-level corruption. In 2010, Parliament adopted a new civil and criminal procedure code. Along with a civil and criminal code adopted in 2009, these lay the new foundation for the Romanian legal system and judiciary. Nevertheless, there is still room for improvements regarding the situation in the judiciary.

#### ***4.2.1.4 Discussion of the Results***

In this section I will discuss the main findings of the NIT reports. Focusing on the fight against judicial corruption in Romania, it was the main objective of my research regarding the NIT reports to identify the milestones and the progress which has been made as well as the EU efforts to fight judicial corruption in Romania (see tables 4 and 5).

The assessment of the NIT reports (2004-2007) demonstrates that Romania tried to intensify its efforts to fight judicial corruption and reinforce the judicial reform. Set-backs with regard to fighting judicial corruption, however, happened regularly during 2004 and 2007. The evaluation of the NIT reports points out that the limitations in the judiciary and fighting corruption were not fixed in a comprehensive manner until the EU accession of Romania. Nevertheless, the improvement of the situation in the judiciary

continued and Romania made important strides in 2005 and 2006 to fight judicial corruption. Due to the moderate improvements we may argue that the EU was able to put pressure on Romania before accession. Thus, the active leverage of the EU through the material and political incentives led to several positive results in fighting judicial corruption before 2007. In other words, the EU efforts to fight judicial corruption had a significant impact during that time period.

The analysis of the NIT reports (2008-2011) leads to the assumption that after the EU accession, the Romanian efforts to further implement the judicial reform and fight judicial corruption stagnated periodically. The 2008 NIT report highlights serious setbacks concerning the anti-corruption efforts. The reports of the following years also remarked a lack of transparency of the court system and a lack of predictability and consistency of the justice system. These are aspects which may have a direct effect on the fight against judicial corruption and may hamper the efforts. Furthermore, these long-term deficiencies may be seen as an indication for the complexity of the problem but also for a decline in the Romanian efforts to fight judicial corruption. This implies that the EU actually has weak legal controls over Romania or at least weak control over its courts after the EU accession. Hence the NIT reports seem to confirm the hypothesis that the EU had more power before accession to reinforce its intention in fighting judicial corruption than after the accession. In addition, the post-accession benchmarks and monitoring process can be seen as less effective if we consider the findings from the NIT reports.

#### **4.2.2 Corruption Perception Index (2004-2010)**

The Corruption Perception Index (CPI) was developed and established by Transparency International (TI). The CPI is published annually since 1995. TI can be seen as the largest and most reputable non-governmental organization in the sector of anti-corruption with headquarters in Berlin and national offices in more than 90 countries. The



CPI is not a representative index (Wolf 2011, 4). It is a composite index, drawing on 17 surveys from 13 independent institutions, which gathered the opinions of businesspeople and country analysts. Due to fact that they combine information from various data, these indices can include a larger number of countries than any particular data set. While public attention is primarily focused on the country ranking, the CPI scores are of higher significance, in particular when it comes to comparing countries over time. The CPI scores range from 10 (highly clean) to 0 (highly corrupt). A score of five is the number TI considers the borderline figure distinguishing countries that do not have a serious corruption problem (Ledeneva forthcoming 2011, 392). Although most scholars working on anti-corruption use the CPI, they know that there are potential shortcomings (top-down approach, composition of the index, etc.), which should be considered (Wolf 2011, 4).

Table 6 presents the CPI from 2004 to 2010 for Romania. The CPI may help to answer if EU efforts had any significant impact related to corruption in Romania. Romania had a score under five between 2004 and 2010 and therefore it is still considered as a country with a serious corruption problem. Bearing in mind that there are other intervening variables which may have an influence on the trend of the CPI, I argue that the increase of the score between 2004 and 2007 is partially a result of the effective EU efforts to fight corruption in Romania. The stagnation of the score between 2008 and 2010 may result from the extinct external incentives and the weak compensation of these incentives through post-monitoring and extended anti-corruption mechanism. Consequently, this implies that there was a change of degree of EU leverage.

| Year | Corruption Perception Index |
|------|-----------------------------|
| 2004 | 2.9                         |
| 2005 | 3                           |
| 2006 | 3.1                         |
| 2007 | 3.7                         |
| 2008 | 3.8                         |
| 2009 | 3.8                         |
| 2010 | 3.7                         |

Table 6: CPI from 2004 to 2010 (Romania)

#### 4.2.3 GRECO Reports (2002-2009)

It may be worthwhile to consider the GRECO reports, an anti-corruption tool created and reinforced by the CoE, as a further benchmark to indirectly measure the effectiveness of the EU efforts to fight judicial corruption in Romania. The CoE is an international institution with 47 member states founded in 1949 and located in Strasbourg/France. The Committee of Ministers established GRECO in order to monitor and assess the implementation of the five key anti-corruption instruments of CoE. These key anti-corruption instruments are: (1) the Criminal Law Convention on Corruption, (2) the Civil Law Convention on Corruption, (3) the Resolution on the Twenty Guiding Principles for the Fight Against Corruption, (4) the Recommendation on Codes of Conduct of Public Officials, and (5) a Recommendation on Common Rules Against Corruption in the funding of Political Parties and Electoral Campaigns. GRECO was introduced in 1999 as a so-called partial agreement with a limited number of participating countries. As a result of the large number of CoE anti-corruption norms, GRECO monitoring is carried out in separate evaluation rounds. In each evaluation round, the implementation of some selected

norms is evaluated using a peer review method similar to the monitoring mechanism established by the OECD Working Group on Bribery in International Business Transactions. The reports on Romania are freely available on the GRECO website (Wolf 2011, 3).

Concerning the evaluation procedure, GRECO has an institutionalized proceeding. In each round and for each member state, GRECO usually adopts at least (1) an evaluation report with several recommendations how to fulfill CoE anti-corruption norms, (2) a compliance report (approximately two years later) and (3) addenda to the compliance report (approximately two years after the compliance report) (Wolf 2011, 4).

It is necessary to mention some constraints of the GRECO reports. The GRECO's anti-corruption policies are grounded on the core assumption (ideology) that the implementation and enforcement of certain legal and institutional norms reduces the level of corruption in a country more or less without considering historical, cultural, and other contextual factors. In this context, the regulatory framework (for instance, the implementation and enforcement of GRECO norms) probably matters somehow in combination with other contextual factors, but it is definitely not the only variable to determine the level of corruption in one country (Wolf 2011, 5, 12).

The tables 7 and 9 include the quantitative results of GRECO's first evaluation round (2002-2006) and second evaluation round (2005-2009). The absolute value in the first column stands for the GRECO recommendations. The second and third columns present the implementation rate. In this context, A stands for the number of recommendations that have been implemented satisfactorily; B stands for the number of recommendation that have been dealt with in satisfactory manner; C stands for the number of recommendations that have been partly implemented; D stands for the number of recommendations that have not been implemented. The EU-22, which is presented in the second row of the tables 7 and 9, is used for the comparison with the Romanian values.

Here, the EU-22 includes following countries: Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

|                                 | 2002<br>(absolute value) | 2004<br>(percentage) |         |         |        | 2006<br>(percentage) |         |         |        |
|---------------------------------|--------------------------|----------------------|---------|---------|--------|----------------------|---------|---------|--------|
| Romania                         | 13                       | A<br>92              | B<br>0  | C<br>8  | D<br>0 | A<br>100             | B<br>0  | C<br>0  | D<br>0 |
| EU-22 <sup>6</sup><br>(Average) | 12,64                    | A<br>65              | B<br>17 | C<br>22 | D<br>3 | A<br>63              | B<br>25 | C<br>11 | D<br>1 |

Table 7: Quantitative results of GRECO's first evaluation round in Romania (2002-2006)

The first row of table 7 presents the implementation results of Romania between 2002 and 2006. In the first evaluation round GRECO enunciated 13 recommendations. The results from 2004 and 2006 clearly portray the implementation efforts and therefore compliance to implement the recommendations remained high (2004: 92%) in Romania until 2006 (100%). It is notable that the recommendation that has been partly implemented (C) in 2004 is not relevant for judicial corruption and therefore not considerable for this analysis. Compared to the EU-22, Romania performed much better than the average of the evaluated EU countries. Thus, we may argue that besides the pressure by the CoE, EU conditionality had an impact of reinforcing Romanian efforts to fight judicial corruption during that time. The high implementation rate of new policies may be a signal for the spirit of optimism and more than paying lip service before the accession in 2007. In particular, the recommendations viii, ix and x related to judicial reform and independence of the judiciary (table 8) demonstrates the Romania efforts to improve the quality of the judiciary and to reinforce the fight against judicial corruption. These recommenda-

<sup>6</sup> In 2006, EU-22 does not include Belgium because this country had no addenda to compliance report since all recommendations have been implemented satisfactorily.

tions have been implemented satisfactorily in 2004 (Group of States against Corruption 2004).

| GRECO recommendations | Content  |
|-----------------------|--|
| viii                  | GRECO recommended that in order to better guarantee the necessary independence for the judicial bodies responsible for judging corruption offences, the Romanian authorities introduce the legislative reforms to restrict the Minister of Justice's powers to intervene in the supervision of judges, and to provide guarantees regarding the immovability of the judges at the Supreme Court of Justice, without affecting the possibility of placing a time-restriction on the post of president or deputy president of this Court. (Group of States against Corruption 2004, 10) |
| ix                    | GRECO recommended to undertake the necessary legislative reforms so as to reduce appropriately the Minister of Justice's powers of intervention vis-à-vis prosecutors in order to guarantee the necessary independence of the authorities responsible for investigating and prosecuting corruption cases. (Group of States against Corruption 2004, 11)  |
| x                     | GRECO recommended to speed up the process of adopting the draft law on the protection of witnesses, and including the protection of experts in it, in criminal proceedings, and making possible the use of undercover agents during the investigation of corruption cases. (Group of States against Corruption 2004, 11)   |

Table 8: Important GRECO recommendations – first evaluation round (Romania)

The first row of table 9 presents the implementation results of Romania between 2005 and 2009. In the second evaluation round GRECO formulated 15 recommendations for Romania. In comparison, the EU-22 received on average 11 recommendations and therefore four recommendations less than Romania.

|                    | 2005<br>(absolute value) | 2007<br>(percentage) |         |         |         | 2009<br>(percentage) |         |         |        |
|--------------------|--------------------------|----------------------|---------|---------|---------|----------------------|---------|---------|--------|
| Romania            | 15                       | A<br>27              | B<br>13 | C<br>40 | D<br>20 | A<br>46              | B<br>27 | C<br>27 | D<br>0 |
| EU-22<br>(Average) | 10,77                    | A<br>33              | B<br>23 | C<br>34 | D<br>10 | A<br>46              | B<br>29 | C<br>22 | D<br>3 |

Table 9: Quantitative results of GRECO's second evaluation round in Romania (2005-2009)

The results of table 9 reveal that the implementation efforts of both Romania and the EU-22 have been decreasing and therefore compliance to implement the recommendations remained quite low in Romania until 2009. Regarding A (27%) and B (13%) in 2007, Romania's implementation rate was even lower compared to EU-22. Thus, Romania's policy implementation rates for C (40%) and D (20%) remained higher.

Table 10 presents the recommendations which are valuable to consider while analyzing the data from the second evaluation round. These recommendations explicitly focus on judicial reform, corruption and judicial independence. (1) Recommendation iii about the capacity of prosecution services and the efficiency of courts has been partly implemented (C) in 2007 and was finally implemented satisfactorily (A) in 2009. (2) Recommendation iv about the effective implementation of co-operations between various institutions has been dealt with in a satisfactory manner (B) in 2007. (3) Recommendation vi about recruitment and promotion has not been implemented (D) in 2007 and was eventually partly implemented (C) in 2009. (4) Recommendation vii about appropriate training for public officials has been partly implemented (C) and was dealt with in a satisfactory manner (B) in 2009. (5) Recommendation x about consolidation and harmonization of the rules on gifts has not been implemented and was partly implemented (C) in 2009.

Comparing the policy implementation rates from the first evaluation round with the rates from the second implementation round, we find evidence that there was a decline of policy implementation in the second evaluation round with regard to Romania. Focusing on the relevant GRECO recommendation from both rounds, the recommendations from the second evaluation round were implemented less satisfactorily than the ones from the first evaluation round. Thus, I would assume that the decreasing policy implementation rate between 2007 (compliance report) and 2009 (addenda report) may support the argument that till 2007 Romanian efforts to fulfill CoE and EU requirements

and recommendations remained high. The analysis of the GRECO reports also reveals the trend that after the EU accession of 2007, there was a decline in Romanian efforts to fight judicial corruption. Additionally, it can be assumed from the results that the EU efforts to reinforce the judicial reform and fighting judicial corruption had a significant impact before 2007 which is also indirectly observable by assessing the relevant recommendation of the GRECO reports.

| GRECO recommendations | Content   |
|-----------------------|---|
| iii                   | GRECO recommended to strengthen the capacities of prosecution services and courts to deal efficiently with corruption cases within a reasonable time, in particular through specialization and training. (Group of States against Corruption 2007, 4)   |
| iv                    | GRECO recommended to establish effective co-operation among the National Anti-Corruption Prosecution Office, the Prosecutor's Office at the High Court of Cassation and Justice and the competent police departments in cases combining corruption, money laundering and/or organized crime. (Group of States against Corruption 2007, 6) |
| vi                    | GRECO recommended to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion. (Group of States against Corruption 2007, 8)   |
| vii                   | GRECO recommended to complement the existing codes of conduct, where necessary (e.g. regarding reactions to gifts and reporting of corruption) and to ensure that all public officials receive appropriate training. (Group of States against Corruption 2007, 9)   |
| x                     | GRECO recommended to consolidate and harmonize the rules on gifts and to provide appropriate training for public officials, drawing on practical examples. (Group of States against Corruption 2007, 13)  |

Table 10: Important GRECO recommendations – second evaluation round (Romania)

### **4.3 Discussion of the Results**

There are two basic questions which I will raise in this section of the thesis: (1) What kind of evidence supports hypothesis 4 and (2) what kind of evidence challenges hypothesis 4?

Regarding the reform efforts in the judiciary and the fight against judicial corruption, Romania shows a mixed picture after the EU accession of 2007. The analysis of the EU progress reports shows that Romania did not manage to adopt the average EU level

in the judiciary. Furthermore, the fight against judicial corruption stagnated from time to time. Bearing in mind that the EU progress reports – as top-down evaluations – are slightly biased, we have to be careful with the interpretation of the results. Nevertheless, the comprehensive analysis found evidence to confirm the fourth hypothesis. The EU progress reports demonstrate that before accession the EU efforts were more effective and therefore the EU had an effective tool with the membership conditionality to put pressure on Romania. The introduction of post-monitoring external pressures was a logical step, but did not manage to compensate the loss of EU leverage after the accession. This was also confirmed by the analysis of the EU progress reports.

The analysis of the NIT scores – judicial framework and independence as well as corruption – and the NIT reports was an additional approach to find evidence to confirm or challenge the fourth hypothesis. Evidence from the two NIT scores presented no significant improvement with regard to corruption and judicial framework and independence before 2007. Consequently, we may assume that EU conditionality and its political and material incentives were not strong enough to convince Romanian elites to adequately implement judicial reforms, which aim at fighting judicial corruption. Due to the limited validity of these scores, I proceeded with the evaluation of the NIT reports. The assessment of the NIT reports presents moderate improvements concerning judicial reform and fighting judicial corruption before 2007. The evaluation results of the NIT reports after the EU accession led to the assumption that there were several setbacks in the following years as we have seen in table 4 and 5. Hence the NIT reports seem to confirm hypothesis 4 that the EU had more power before accession to reinforce its intention in fighting judicial corruption than after the accession. Additionally, the post-accession external pressures can be seen as less effective. This would be in line with the EU progress reports, even if the results of the NIT reports are less significant.



The CPI confirms the trend that the EU efforts may have been one reason for lowering the level of corruption in Romania until 2007. The stagnation of the score between 2008 and 2010 may partially result from the cessation of external incentives and the weak compensation of these incentives through post-monitoring and extended anti-corruption mechanisms. While we find evidence for a potential change of degree of EU leverage and it is hard to draw any valuable conclusion from the CPI score to confirm or reject the fourth hypothesis.

The evaluation of the GRECO reports completed the empirical part to test the fourth hypothesis and answer the research questions. The GRECO reports opened the opportunity to indirectly measure the effectiveness of EU efforts to fight judicial corruption in Romania by analyzing the policy implementation rates. The analysis of the GRECO reports from the first evaluation round show that besides the efforts by the CoE, EU conditionality was probably the driving force to reinforce Romanian efforts to fight judicial corruption during that time. The high implementation rate of new policies may be a sign for the spirit of optimism and more than paying lip service before the accession in 2007. By comparing the policy implementation rate from the first evaluation round with the result from the second evaluation round, we clearly see that the policy implementation decreased in the second evaluation round. Having analyzed the relevant recommendation from both rounds, we may argue that the degree of satisfactorily implementing policy recommendations decreased over time. Thus, the analysis of the GRECO reports reveals the trend that after the EU accession, there was a decline in Romanian efforts to fight judicial corruption. Consequently, we find further evidence to confirm the fourth hypothesis that EU efforts were relatively effective to lower the level of judicial corruption before Romania entered the EU in 2007.

## 5. Conclusion

This paper set out to answer two research questions: if EU efforts to fight judicial corruption in Romania had a significant impact and if EU efforts became more effective before or after the EU accession. Consequently, I decided to give a comprehensive and structured overview by stressing the key points of the four hypotheses in the literature review and chapter about observable implications. The empirical part of the thesis may contribute to shedding light on a prevalent topic in the EU enlargement literature. The before-after case study design and the process-tracing method allowed the analysis of pre-accession and post-accession conditionality and therefore opened the opportunity to answer the research questions. By assessing the EU progress reports, the NIT scores and reports, the CPI and the GRECO reports, I found several remarkable developments regarding the fight against judicial corruption. Two of the key elements of EU conditionality – conditions and monitoring – have evolved significantly. Thus, the introduction of post-accession benchmarks and the strengthening of the monitoring process represent important steps in the evolution of EU efforts to fight judicial corruption in Romania. However, the analysis shows that it is difficult to compensate the pre-accession conditionality through post-accession monitoring mechanisms. Although the analysis confirms that EU efforts had a significant impact to fight judicial corruption in Romania before accession, there is still room for improvements for time after the EU accession. A more in depth bottom-up approach and other factors which are only considered in the literature review of this thesis may challenge this argumentation but were not tested due to the limited number of pages of such a thesis. Regarding the incentive structure, the analysis of the key documents (EU, NIT and GRECO) finds evidence that this element of EU conditionality may be the main weakness. After Romania entered the EU, the EU lost its attractive accession advancement rewards and can merely rely on explicit threats to in-

duce compliance. However, the limited penalizing power of the remedial and preventive sanctions set up in the framework of the CVM causes a fairly weak incentive structure which negatively influenced the effectiveness of post-accession conditionality (Gateva 2010, 21).

Four years after the EU accession, Romania is still subject to unprecedented post-accession monitoring. Although some steps have been taken, the pace of judicial reforms and fighting of judicial corruption remains slow as we have seen in the empirical part of the thesis. In the light of evidence from the empirical section we have seen that Romania passed through an extensive and controversial process of legal adaptation of civil and penal procedural codes. In fact, these codes were one of the key targets of external pressure implemented and executed by the EU and the CoE through two distinct mechanisms of influence: (1) During the pre-accession process the EU monitored the amendments made to codes and (2) the ECHR was expected to be encompassing integrated in the domestic legal system and to finally reshape the rules with regard to the civil right of fair trial (Piana 2010, 126f.). Regardless of the many slowdowns in accomplishing international standards and anti-corruption initiatives coming from the 'Western World', the external pressure by the EU on the judicial reforms in Romania may have played a crucial role as an argument for officials in the judiciary to partially sweep away internal resistances for fighting judicial corruption.

Regarding the limitation of the thesis, I have to admit that I was merely able to present a limited number of independent variables and tested one of the main hypotheses. Thus, it is tough to draw an objective and overall conclusion about the research questions. There is definitely a selection bias referring to the developed hypotheses. I discussed the most important and popular specialized literature in order to derive the hypotheses. This leads to the problem that there is no objective measurement of the popularity of the most crucial literature. Hence a partially subjective valuation is unavoi-

able. Furthermore, I am aware of the fact that it was not possible to equally test all four hypotheses within the frame of this thesis.

In addition to the first three hypotheses (EU socialization, legacy of communism and objective material factors, and public opinion and levels of public trust), it may be worthwhile for future research projects to evaluate the impact of media, psychological dimensions, system-related factors, transnational corporations and further international organizations related to the fight against judicial corruption in Romania. Moreover, the application of the bottom-up approach to encounter the ethno-centric biases may be worthwhile to receive a more profound picture of the whole situation with regard to judicial corruption. Thus, it may be considerable to develop a research project which is based on expert interviews with officials in the judiciary (micro, meso and macro level) and with scholars working in this research field.

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## 7. Curriculum Vitae

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#### Education:

- 09/2010-05/2011     **Study Abroad** at Rutgers, the State University of New Jersey for Political Science
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- Since 07/2011     **Research Assistant** (University of Constance)
- 03/2009 – 05/2009     **Internship: German Federal Ministry of Economic Cooperation and Development** (Germany)
- 10/2008 – 03/2009     **Research Assistant** (University of Siegen)
- 03/2008 – 04/2008     **Internship: RTI International/DBE I** (Indonesia)
- 06/2006 – 07/2006     **Internship: Law office/Betzga & Korell** (Germany)
- 04/2006 – 06/2006     **Internship: RTI International/DRSP** (Indonesia)

#### Civilian Service:

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