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POST-ACCESSION DEMOCRATIC BACKSLIDING IN THE NEW EUROPE:
THE CASE OF ANTI-CORRUPTION PERFORMANCE

By

CRISTINA GHERASIMOV

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ABSTRACT OF THE DISSERTATION

Post-Accession Democratic Backsliding in the New Europe:

The Case of Anti-Corruption Performance

by CRISTINA GHERASIMOV

Dissertation Director:

Roger Daniel Kelemen

This dissertation examines the factors that drive variation in anti-corruption performance in the new EU member states from Central and Eastern Europe after EU accession. By employing a mixed-method approach, it (a) identifies and compares the institutional weaknesses that allow abuse of power in the executive and the legislature, and (b) analyzes how domestic control and oversight mechanisms help contain corrupt practices after accession (with a particular focus on the judiciary and prosecution). The study concludes that differences in designs of anti-corruption institutions that allow or constrain abuse of decision-making power in tandem with an independent, non-politicized judiciary explain variation in post-accession control of corruption.

ACKNOWLEDGEMENT

To my grandparents...

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List of Acronyms

ACP	Anti-corruption performance
AKT	Anticorruption Coordination Body
BEEPS	Business Environment and Enterprise Performance Survey
CBA	<i>Centralne Biuro Antykorupcyjne</i> (Central Bureau for Anti-Corruption)
CCJE	Consultative Council of European Judges
CEE	Central and Eastern Europe
CIEC	Chief Institutional Ethics Commission
COA	Court of Audit
COEC	Chief Official Ethics Commission
COI	Conflict-of-interest
COPS	Control Office of the Public Service
CPC	Commission for the Prevention of Corruption
CPI	Corruption Perception Index
CZE	Czech Republic
DV	Dependent variable
EST	Estonia
EU	European Union
EU11	Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia plus Bulgaria and Romania
EU28	28 European Union member states
EU8	Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia
EUMAP	EU Monitoring Accession Program
FH	Freedom House
Fidesz-MPP	<i>Fiatal Demokraták Szövetsége</i> (Hungarian Civic Alliance)
GCO	Government Control Office
GPO	General Prosecutor's Office of Slovakia
GRECO	The Group of States against Corruption
HDB	Hungarian Development Bank
HDIM	Human Dimension Implementation Meeting
HUN	Hungary
ISS	Internal Security Service of Estonia
IV	Independent variable
KNAB	<i>Korupcijas novēršanas un apkarošanas birojs</i> (Corruption Prevention and Combatting Office)
LAT	Latvia
LIT	Lithuania
MPs	Members of parliament
NCJ	National Council of the Judiciary of Poland
NGO	Non-governmental organization

NIK	<i>Najwyższa Izby Kontroli</i> (Supreme Audit Office of Poland)
NIS	National Integrity System
NIT	Nations in Transit, Freedom House report
NKU	Supreme Bureau of Supervision
OCCI	Organized Crime and Corruption Investigation
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Co-operation and Development
OLS	Ordinary Least Squares regression
OMLP	Office of Money-Laundering Prevention
OPC	Office for the Prevention of Corruption
OSCE	Organization for Security and Cooperation in Europe
OSF	Open Society Foundations
OSI	Open Society Institute
OSP	Office of the Special Prosecutor of Slovakia
PACC	Parliamentary anti-corruption committee
PiS	<i>Prawo i Sprawiedliwość</i> (Law and Justice Party)
PMB	Procurement Monitoring Bureau of Latvia
POL	Poland
PPO	Public Procurement Office
SAO	State Audit Office
SC	Special Court of Slovakia
SCC	Specialized Criminal Court of Slovakia
Sejm	Lower Chamber of Parliament in Poland
SLO	Slovenia
SMER-SD	<i>Smer–sociálna demokracia</i> (Direction – Social Democracy party)
SNCJ	Slovak National Council of the Judiciary
SPO	Special Prosecutor of Slovakia
SPPR	State Public Procurement Register of Poland
STT	<i>Specialiųjų tyrimų tarnyba</i> (Special Investigation Service of the Republic of Lithuania)
SVK	Slovakia
TI	Transparency International
UCJ	Universal Charter of the Judge
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UOK	Department for Revealing Corruption and Serious Economic Criminality
V5	‘Control of corruption’ variable name
V6	‘Rule of law’ variable name
WB	World Bank
WGI	Worldwide Governance Indicators
WTO	World Trade Organization

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Part One.

Theoretical and Methodological Considerations

"Unlimited power is apt to corrupt the minds of those who possess it."

William Pitt, Earl of Chatham, British Prime Minister (1770)

1

Introduction

Globally, it is estimated that approximately five per cent of the world economy is lost through corruption.¹ The European Commission alone has assessed that corruption drains one hundred and twenty billion euros – one per cent of the European Union's GDP – to private pockets each year.² Most of this money is considered to be lost in the newly joined EU member states. The majority of international indicators of corruption show that with very few exceptions, most Central Eastern European (CEE) states lag behind the old EU member states in their control of corruption.³ Yet, when we zoom in on the region, different anti-corruption performance trajectories can be distinguished. Explaining what causes this intraregional variation represents the focus of this dissertation.

To account for the drivers of variation in anti-corruption performance after EU accession, this study proposes to (a) identify and compare the institutional weaknesses that allow abuse of power in the new EU member states, and (b) analyze how domestic control and oversight mechanisms help contain corrupt practices after accession (with a

¹ Rasma, Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (London: M. E. Sharpe, 2005), 8.

² European Commission, *Anti-Corruption Report 2014* (European Commission: 2014), 1.

³ The Group of States against Corruption (GRECO), Compliance records for individual countries; Transparency International, *2016 Corruption Perception Index* (CPI); World Bank, *World Governance Indicators 2015*.

particular focus on the judiciary). This study argues that differences in designs of anti-corruption institutions that allow or constrain abuse of decision-making power in tandem with an independent, non-politicized judiciary explain variation in post-accession anti-corruption performance. In this context, all states experience idiosyncratic institutional vulnerabilities – ‘loopholes’ – that rent-seeking legislative and executive office holders may seek to abuse. Whether or not officials exploit these weaknesses depends on the strength of existing internal checks on power. Strong designs of anti-corruption institutions are hence necessary but not sufficient to avoid backsliding in anti-corruption performance.

This study further argues that strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance. They are especially salient when internal checks within the executive and the legislature are poorly functioning. Anti-corruption institutions hence work better together with independent judiciaries that back them up when officials abuse public office. The key check on political power, especially in the context of young democracies, is a strong and independent judiciary (including prosecution) that can uphold existing anti-corruption institutions by ensuring that institutional ‘loopholes’ are not abused, and the rule of law is respected. Finally, this study argues that states can ensure a strong independent judiciary via different combinations of judicial institutions. One thing that judiciaries have in common in anti-corruption frontrunners, however, is their insulation from excessive executive interference.

This introduction chapter continues by laying out the empirical considerations that shape the demand for a study on political corruption in the new EU member states after

accession. Further, it introduces the theoretical and methodological approaches that underpin this dissertation. It ends by providing a roadmap, explaining the relevance of the research topic, and laying out the limitations of this dissertation.

Empirical Considerations

In the thirteen years following the largest wave of EU enlargement, we notice that some states register continued progress in adopting and implementing reforms while others stagnate or regress from the democratic achievements scored during the pre-accession period. One of the areas where national performance has varied considerably is the control of corruption. In the last two decades, mostly motivated and pressured by the EU integration process, the CEE new member states have introduced numerous measures to control corruption. Yet corruption not only remains prevalent, it is in fact worsening in some of the states according to the World Bank world governance indicator (WGI),⁴ Transparency International's (TI) Global Corruption Barometer and Corruption Perceptions Index, the Freedom House Nations in Transit report,⁵ the DEMOS Report,⁶ and the latest European Commission (EC) Report on EU Anti-Corruption.⁷

In 2004 immediately after accession, Slovenian lawmakers, for instance, have tried numerous channels to close down the Commission for the Prevention of Corruption, arguing that it is expensive and unnecessary. At the same time, the wages of all public watchdogs staff have been reduced by a third. In 2007 in Latvia, the PM in a politically

⁴ World Bank, *World Governance Indicators 2015*.

⁵ Freedom House, *Nations in Transit Report 2016*.

⁶ DEMOS Report, "Backsliders: Measuring Democracy in the EU," 2013, <http://www.demos.co.uk/projects/backsliders>.

⁷ European Commission, *Anti-Corruption Report 2014*.

motivated effort, tried to replace the head of the Corruption Prevention and Combating Bureau (KNAB), established in 2002 to take on government corruption, endeavor that was eventually achieved by the Parliament in 2008. In Slovakia, the Justice minister called the Special Anti-Corruption Court a “fascist institution”, eventually managed to have it deemed unconstitutional.⁸ These examples prove that the domestic political will in certain CEE states faded away together with the EU membership conditionality. They also show that anti-corruption institutions are vulnerable after accession without the strong EU pressure for the respect of the rule of law that was characteristic to the EU pre-accession period. Moreover, they raise flags about how easy it is to amend or reverse institutions if they come in strong opposition to political or economic domestic interest groups. Hence, corruption is a concern of significant salience both for the consolidation of CEE democracies and their market economies, and for the EU as a whole.

According to Eurobarometer data, nine out of ten respondents in Bulgaria, Hungary, Slovenia, and Romania agree that the phenomenon of corruption represents a key problem in their country.⁹ Moreover, eight out of ten Bulgarians and Hungarians “totally agree” that corruption is a major national problem. When analyzing the World Bank’s WGI, states such as the Czech Republic, Slovakia, and Hungary seem to have lost their momentum since joining the EU, and are considered to be backsliding on the previously undertaken democratic reforms.¹⁰ Hungary, in this context, notwithstanding its comparatively smooth EU integration process, affiliation to all salient international legal

⁸ “Talking of virtue, counting the spoons,” *The Economist*, May 22, 2008, accessed May 3, 2017, <http://www.economist.com/node/11412918>.

⁹ European Commission, 2008 *Eurobarometer*.

¹⁰ World Bank, *World Governance Indicators 2015*.

instruments and adoption of three key reform packages since 2000, displays much worse corruption indicators than a decade ago.¹¹

States such as Poland and Estonia, on the other hand, register progress in controlling corruption (see Figure A.1). These, in fact, are two of the very few new EU member states that avoided deterioration of democratic commitments undertaken in the pre-accession period. Though with the current developments undertaken by the new government, Poland might soon be joining the laggards' group, including in anti-corruption performance. States such as Lithuania and Latvia have not registered any significant anti-corruption rollbacks or progresses after EU accession. Hence, they are part of the middle group that sustains previously undertaken democratic achievements. These are in between the backsliders and the progressing frontrunners. The immediate question that arises is what accounts for the variation in anti-corruption performance in the EU post-accession period? Explaining why some CEE states register better anti-corruption scores than others in the particular contexts of the eight CEE new member states represents the focus of this dissertation research.

Proposed theoretical and methodological approach

This dissertation centers on the empirical validation of two main hypotheses. First, states that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession (H_1). And states that have developed institutional arrangements that enhance the independence of judiciaries before

¹¹ Diana, Schmidt-Pfister and Holger, Moroff, eds. *Fighting Corruption in Eastern Europe: A Multilevel Perspective* (Routledge, 2012), 57.

accession are more likely to improve or stabilize their anti-corruption performance after accession (H₂).

In this regard, the study defines *anti-corruption performance* as the changing level of corruption in a country, year by year between 1995-2014. The study limits the analysis to political corruption more specifically, which is defined as “behavior that takes place within public institutions.”¹² I look particularly at explaining changes in levels of corruption both in the *legislature* and the *executive*. For a quantitative understanding of the state of corruption, the study uses the WGI of control of corruption as well as opinion poll data. For a qualitative explanation of anti-corruption performance, the study analyzes how areas most affected by corruption (called ‘foci of corruption’) change before and after accession. Furthermore, the study defines legal ‘loopholes’ (also *institutional weaknesses*) as the vulnerabilities that are embedded in institutional designs. If unchecked or poorly monitored they can be misused for private gain.

An example of an *institutional loophole* would be the rule that requires asset declarations for elected officials but does not provide for the existence of an appropriate agency capable of verifying the veracity of these statements. Or, the rule would require an oversight mechanism but it would not be empowered to impose sanctions in case irregularities are detected or no declaration is filed at all. In this context, despite the existence of conflict of interest legislation that meets international standards, it can be easily bypassed or abused since its infringement does not trigger any de facto penalties. Whether or not public officials can exploit such institutional ‘loopholes’ depends hence on the quality and effectiveness of existing internal checks on power. Weak or

¹² Karklins, *System*, 106.

inappropriately enforced checks erode institutional designs, in this case, and consequently incentivize more frequent abuse of existing institutional ‘loopholes’.

Lastly, this study defines *judicial independence* as the capacity of a judicial system to sanction instances of political corruption without the interference of external actors. An example of interference of an external actor is the undue influence exerted by the executive over courts or individual judges to sway judicial rulings. The study hence assesses the role of *independent judicial systems* in containing corruption, as a separate branch of government and a domestic check on political power. I argue that strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance especially when internal checks within the executive and the legislature are poorly functioning. The key mechanism overseeing political power, especially in the context of young democracies, is a strong and independent judiciary that can back up existing anti-corruption institutions by ensuring that institutional ‘loopholes’ are not abused, and the rule of law is respected. I finally argue that different states can ensure a strong independent judiciary via different combinations of judicial institutions.

From a methodological perspective, this dissertation undertakes a multi-method approach to explaining variation in anti-corruption performance in the new member states after their EU accession. It undertakes cross-case analysis in conjunction with within-case analysis within the same research project.¹³ Assessing control of corruption has traditionally been a complex endeavor due to measurement and operationalization issues. This study therefore uses triangulation to ensure more rigorous findings. By choosing the World Bank’s governance indicator to measure control of corruption, this study follows

¹³ Gary Goertz. "Multimethod Research, Causal Mechanisms, and Selecting Cases." *Unpublished manuscript, Department of Political Science* (University of Notre Dame, 2015), 7.

the more recent works on corruption, which examine the longitudinal aspects of the phenomenon. Yet the fact that this dissertation explores corruption in a medium-N analysis, any rigorous statistical analysis would be limited by potential intrinsic model misspecification errors. By delving into the idiosyncrasies of institutional designs shaping the anti-corruption framework of a country, the study sheds light on the substance of corruption in the CEE region and compensates for the weaknesses of a purely quantitative analytical approach.

To test the proposed hypotheses, this study makes use of available assessment reports provided by international institutions specializing on anti-corruption. It also draws on empirical primary data collected in September-October 2016 in three states – Estonia, Poland, and Slovakia – in the context of a nested analysis model. From a methods perspective, the study combines longitudinal and cross-sectional analysis, as well as within-case and cross-case comparative methods of analysis. This blend of analytical approaches allows for a more rigorous and comprehensive investigation of the phenomenon of political corruption.

Structure of the dissertation

The findings of this dissertation are derived in two parts. Part One lays out the literature review, theoretical and methodological considerations. Part Two empirically tests the two hypotheses. Part One, in this regard, is comprised of four chapters. After the introductory chapter, Chapter 2 reviews the existing literature on corruption. It finds that the institutional school of thought provides the most relevant explanatory arguments

among the scholarly works, and warrants assessment in the empirical chapters of this dissertation. While many factors do not vary across countries under scrutiny in this study in a way that might explain anti-corruption performance (i.e. EU membership, economic integration, economic crisis, etc.), there is significant variation in progress states made in establishing anti-corruption institutions and independent judiciaries in the 1990s that could plausibly explain later anti-corruption performance. This finding also leads us to the choice of case studies that, in this context, are necessary to explore if in fact there is evidence that institutional factors explain outcomes.

Chapter 3 lays out the theoretical considerations of this study. It explains the underlying assumptions of the two tested hypotheses, as well as details their theoretical underpinnings. Chapter 4 focuses on the study's methodology. It defines and operationalizes the dependent and independent variables, lays out the rationale behind hypothesis testing, explains case selection strategies, data collection, and the reason for a multi-method approach to theory testing. Data limitations and the medium-N of cases preclude large-N statistical analysis.

After elaborating the theoretical and methodological framework of the study in Part One, Part Two presents the empirical account. Chapter 5 of the dissertation examines the indicators of anti-corruption performance in all eight cases, and draws subsequent comparisons within and across the three groups. I look at both aggregate indicators, as well as qualitative changes in the foci of corruption. In this chapter hence I identify the main areas where corruption persists characteristic to the frontrunners, the middle group, and the backsliders before and after accession. I find that the frontrunners and the middle

group states addressed more foci of corruption before accession than the backsliders. I identify which ones remain.

Chapters 6 through 9 test hypothesis H_1 in two steps. Chapter 6, 7, and 8 assess in individual case studies the institutional weaknesses of anti-corruption designs of the frontrunners, the middle-group states, and the backsliders consequently. I trace the link between particular institutional weaknesses and particular areas where corruption remained (as opposed to areas of institutional strength corresponding to areas where corruption was largely eliminated). Chapter 9 is the second step of H_1 hypothesis testing, and it compares the findings from the individual case studies. Findings confirm hypothesis H_1 . In a similar format, Chapters 10 through 15 test hypothesis H_2 in two steps. Chapter 10, 11, and 12 assess in individual case studies the judicial frameworks, reforms undertaken to underpin judicial independence, and explain how institutional arrangements account for anti-corruption performance. Each chapter corresponds to a case study – Estonia, Poland, and Slovakia consequently. Chapter 14 is the second step of H_2 hypothesis testing, and it compares the findings from the individual case studies. Findings validate hypothesis H_2 . Chapter 15 moves beyond the three cases, and finds support for the tested hypothesis H_2 in the remaining five cases. Finally, concluding remarks in Chapter 16 summarize the central findings of this dissertation and consider the implications for the scholarly literature on corruption and institutional reform.

Why study backsliding in anti-corruption performance?

Explaining backsliding in anti-corruption performance in CEE countries is a currently relevant project from three different perspectives. First, it is salient because of corruption's potential repercussions on the fabric of young democracies. The prevalence of the phenomenon weakens civic trust in public officials, diminishes representation in the policy-making process, erodes democratic values, the rule of law, and ruins state institutions. This social distress consequently corrodes the democratic pillars of the EU as a whole, a "reputational risk" that the Union cannot afford.¹⁴ Moreover, the newly joined CEE member states represent the new border of the EU. With the current security challenges that range from illegal migration to terrorism and rogue breaches of international law, it is crucial that these states avoid backsliding on previous anti-corruption achievements, and address deteriorated capacity in policy areas that are still in need for sustainable reform. Finally, the overall enlargement policy of the EU further to the East will be influenced by how these countries' politically behave after accession. We already see new safeguards put in place, such as the Mechanism for Cooperation and Verification (MCV) for Romania and Bulgaria, measure which is partially based on the EU experience with control of corruption in the 2004 enlargement wave. Therefore it is important to analyze existing institutional arrangements that ensure an effective control of corruption for a better EU anti-corruption policy framework overall.

Second, from a theoretical perspective, there are gaps in the data available to draw regional conclusions on anti-corruption performance variation: few cases for comparison, and fewer systematic findings. According to Open Society Institute's EU Accession Monitoring Report there is not enough comparative research data available on corruption

¹⁴ European Commission, *2014 Anti-Corruption Report*, 8; Open Society Institute, *Monitoring the EU Accession Process*.

in CEE states that would provide the necessary evidence to draw comprehensive and rigorous generalizations.¹⁵ This study intends to address this issue by including the entire universe of cases, that is the new eight EU member states in the CEE region that joined the European community in 2004.

Bulgaria, Croatia and Romania are not considered in this study because they display quite different socio-economic characteristics from the other new EU member states under scrutiny. Also, economically they are more backward and therefore public officials face a different level of incentives in addressing corruption. Moreover, Romania and Bulgaria had a very different starting base than the other CEE states in terms of their fight against corruption. They have also joined the EU later under somewhat stricter set of conditions and reforms to be implemented in regards to rule of law, organized crime, and corruption due to their particularistic political circumstances.

Lastly, from a methodological perspective on the existing literature, most of the scholarly articles focus on explaining control of corruption in the CEE region in the period before accession. The role of EU membership conditionality in pressing for anti-corruption reforms is particularly analyzed.¹⁶ The period after accession however is not covered. Some studies provide a comparison of EU influence on general governance reforms pre- and post-accession.¹⁷ Others analyze more generally the occurrence of

¹⁵ Open Society Institute, *Monitoring the EU Accession Process*, 58.

¹⁶ Karklins, *System*; Geoffrey Pridham, "European Union accession dynamics and democratization in Central and Eastern Europe: past and future perspectives," *Government and Opposition*, 41.3 (2006), 373–400; Alexandru Grigorescu, "The corruption eruption in East-Central Europe: the increased salience of corruption and the role of international organizations," *East European Politics and Societies*, 20.3, (2006), 516–49; Mihaela Gugu, "EU enlargement and anticorruption: lessons learned from Romania," *Journal of European Integration* 34.5 (2012), 429–46.

¹⁷ Grzegorz Ekiert, Jan Kubik, and Milada A. Vachudova, "Democracy in the post-communist world: an unending quest?" *East European Politics and Societies*, 21.1 (2007), 7–30; Rachel Epstein and Ulrike Sedelmeier, "Beyond Conditionality: international institutions and post-communist Europe after enlargement," *Journal of European Public Policy*, 15.6 (2008), 795–805; Gerda Falkner and Oliver Treib,

democratic backsliding.¹⁸ Furthermore, with the exception of few studies that employ a systematic approach, most studies are all qualitative pieces that use one or two case studies of selected countries.¹⁹

Assessment reports, in this regard, point to the fact that analyses of corruption in individual states “are of limited use unless they are detailed and institution-specific”.²⁰ Also, “there is a general lack of detailed research on corruption in candidate countries, both in terms of survey research and qualitative analysis of the vulnerability of various institutions to corruption.”²¹ If the study employs two cases however, depending on the choice of the studies, conclusions either support or contradict the occurrence of a specific phenomenon. Hence their theoretical power of generalization is limited. Moreover, only two of the existing systematic studies employ a longitudinal analysis that includes also the post-accession period.²² They both heavily draw on formal modeling. Kartal, in this regard, highlights in his concluding remarks the need for detailed comparative qualitative

“Three worlds of compliance or four? The EU-15 compared to new member states,” *Journal of Common Market Studies*, 46.2 (2008), 293-313; Philip Levitz and Grigore Pop-Eleches, “Why no backsliding? The European Union’s impact on democracy and governance before and after accession,” *Comparative Political Studies* 43.4 (2010a), 457-85; Geoffrey Pridham, “The EU’s political conditionality and post-accession tendencies: comparisons from Slovakia and Latvia,” *Journal of Common Market Studies*, 46.2 (2008), 365–87.

¹⁸ Ulrike Sedelmeier, “After Conditionality: Post-accession Compliance with EU law in East Central Europe,” *Journal of European Public Policy*, 15.6 (2008), 806-825; Philip Levitz and Grigore Pop-Eleches, “Monitoring, money and migrants: countering post-accession backsliding in Bulgaria and Romania,” *Europe-Asia Studies* 62.3 (2010b), 461-79; Mert Kartal, “Accounting for the Bad Apples: The EU’s Impact on National Corruption Before and After Accession,” *Journal of European Public Policy*, 21.6 (2014), 941-959.

¹⁹ Andrea Krizsan, “From formal adoption to enforcement: post-accession shifts in EU impact on Hungary in the equality policy field,” *European Integration Online Papers*, 13.22 (2009); Maniokas, Klaudijus, “Conditionality and compliance in Lithuania: the case of the best performer,” (2009); Mungiu-Pippidi, 2006, 2008, 2013; Batory, Agnes. “Post-accession malaise? EU conditionality, domestic politics, and anti-corruption policy in Hungary.” *Global Crime*, 11.2 (2010), 164-177; Milada Anna Vachudova, “Corruption and Compliance in the EU’s Post-Communist Members and Candidates,” *JCMS: Journal of Common Market Studies*, 47.s1 (2009), 43-62.

²⁰ Open Society Institute, *Monitoring the EU Accession Process*, 65

²¹ Open Society Institute, *Monitoring the EU Accession Process*, 65.

²² Levitz and Pop-Eleches, “Monitoring, money and migrants”; Kartal, “Accounting for the Bad Apples.”

analyses that trace anti-corruption reforms in CEE countries since the early 1990s.²³ This last statement reinforces the argument that corruption cannot be studied only at an aggregate level for a comprehensive understanding of the phenomenon, its causes and consequences. A detailed and idiosyncratic analysis is required to understand the context-specific factors that might display a different impact in different societies.²⁴

Hence this dissertation makes a theoretical and empirical contribution to the literature on democratic backsliding, institutional reform, and corruption. Methodologically, this study is a combination of within-case study and cross-case analysis. It also covers a longer post-accession period than used in the already existing studies, and namely 2004 to 2014. It also employs a systematic qualitative approach that will have as its subject of study all eight CEE new EU member states that joined the EU in 2004. This combination of a longitudinal approach and a comprehensive qualitative comparison adds to the very few systematic quantitative studies in the literature,²⁵ as well as to the existing qualitative studies that are limited in their prospects for generalization due to the reduced number of cases they examine.

Limitations of the study

This study has both theoretical and methodological limitations. First, it centers around the phenomenon of political corruption more narrowly, and does not make any inferences about the petty corruption practices common in the region. Second, due to how the study is designed, its findings are valid for the CEE region only. Due to institutional

²³ Kartal, "Accounting for the Bad Apples," 954.

²⁴ Karklins, *System*, 35.

²⁵ Kartal, "Accounting for the Bad Apples."

similarities and the role of the EU in its southeastern neighborhood, findings could be extended to the post-communist candidate countries in the Western Balkans and the states included in the Eastern Partnership. But any generalizations should initially be carefully assessed against the states' institutional backgrounds since this study showcases the salience of idiosyncratic differences.

Moreover, due to the choice of medium-N research design, this study does not test alternative hypotheses that have been identified as salient in the existing literature on corruption. In this sense, the study centers on the role of the judiciary as a key domestic control and oversight mechanism that explains better anti-corruption performance. Yet, as the literature review shows, the media and civil society, or political opposition could represent equally strong alternative oversight mechanisms. Moreover, providing a thorough explanation for why political elites initially selected certain institutional anti-corruption and judicial arrangements over others is beyond the scope of this dissertation work. It is, however, an important argument that needs to be addressed by further research to understand what incentivizes progressive institutional change.

Furthermore, the choice of how to measure corruption is an important limitation not only of this study, but more generally of scholarly works on corruption. Though generally consistent, publically available indicators do not fully capture the magnitude and nature of political corruption. Moreover, the number of cases of high-level prosecutions is either low or inexistent in the new EU member states. This might reflect the fact that cases of corruption in the highest echelons of power are rare, or it might reflect the inadequacy of tools to identify, investigate and prosecute such cases. Moreover, where no cases of high-level prosecutions are brought to court, such as in

Slovakia, it is challenging to assess the de facto independence of the judicial system. Also, most of the existing indices measure perceptions of corruption, which if captured in the proximity of corruption scandals, can reflect distorted pictures of the level of control of corruption a state experiences, as the Polish case shows. To further the agenda on anti-corruption research, generally scholars require more accurate measures of corruption than are currently available.²⁶

²⁶ Margit Tavits, "Clarity of responsibility and corruption," *American journal of political science* 51, no. 1 (2007), 218-229.

2

*Assessing Main Theoretical Approaches in the
Literature on Political Corruption*

This chapter aims to first, provide a review of the literature on the existing explanations in regards to understanding variation in anti-corruption performance in the new CEE member states of the Union. Second, it assesses the plausibility of explanations provided by each of these schools. It further identifies what hypotheses the discussed theoretical frameworks would suggest in regards to the central questions of this study. Finally, it dismisses the ones that are *prima facie* implausible, and the remaining ones are kept for further in-depth analysis in the empirical sections of this study.

The literature on corruption has developed rapidly in the last several decades due to the increasing salience of the phenomenon's effects on processes of development and democratization and the special interest of international organizations to root out corruption. Existing theories can be grouped into global, regional, and context-specific explanations. Summary of theoretical explanations can be found in Table B.1. Since this study addresses the specific region of Central and Eastern Europe and is interested in exploring the context-specific explanations of the new EU member states, it takes a slightly different approach. In this regard, the chapter breaks down the existing literature into five main schools of thought that encompass similar explanations, and namely: international factors, institutional, political, economic, and socio-cultural approaches.

After thoroughly assessing the plausibility of each of these schools' arguments, we retain the institutional explanations for further analysis.

In light of the institutionalist account, this chapter finds that institutional differences as well as legal deterrents that limit concentration of discretionary decision-making powers carry most explanatory power in the context of the CEE region. These are employed for further hypothesis testing as they provide the most plausible approach to understanding why some CEE states display better anti-corruption performance than others after their accession to the EU. In this regard, the key check on political power, especially in the context of young democracies, is a strong and independent judiciary that can back up existing anti-corruption institutions by ensuring that institutional 'loopholes' are not abused, and the rule of law is respected. An independent judiciary (which includes an independent prosecution) hence is expected to set apart frontrunners from the laggards in ACP.

I. Explaining main theoretical approaches

1. International determinants

1.1. Economic and normative aspects

According to this theoretical framework, a higher degree of integration of states in the international economic system leads to lower levels of corruption at domestic level. One of the leading arguments in this school of thought claims that greater degree of

international integration exposes societies to economic and normative pressures that sequentially lead to lower levels of corruption.²⁷ This is one of the few theoretical explanations that blend a utility-based perspective with a normative one.²⁸ According to this perspective, an increased level of economic integration alters the costs and benefits of engaging in acts of corruption, and simultaneously delegitimizes it as an inefficient practice through socialization into international norms.²⁹

Others, in a similar theoretical framework, identify international trade,³⁰ international economic crises,³¹ the openness of international markets,³² changes in relative prices in international markets,³³ transnational epistemic communities,³⁴ transnational networks of activists and advocacy groups,³⁵ and international organizations³⁶ as factors that influence domestic outcomes.

²⁷ Sandholtz and Gray, "International integration and national corruption."

²⁸ Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 1978); Wayne Sandholtz and William Koetzle, "Accounting for Corruption: Economic Structure, Democracy, and Trade," *International Studies Quarterly* 44, no. 01 (2000): 31-50; Kenneth Abbott and Duncan Snidal, "Values and Interests: Rational Choice and the Use of International Legalization to Fight Corruption" *Chicago, University of Chicago, Unpublished manuscript* (2001).

²⁹ Sandholtz and Gray, "International integration and national corruption."

³⁰ Alberto Ades and Rafael Di Tella, "Rents, competition, and corruption," *The American Economic Review* 89, no. 4 (1999): 982-993; Sandholtz and Koetzle, "Accounting for Corruption"; Daniel Treisman, "The causes of corruption: a cross-national study," *Journal of Public Economics* 76, no. 3 (2000): 399-457.

³¹ Peter Gourevitch, *Politics in Hard Times* (Ithaca, N.Y.: Cornell University Press, 1986).

³² Ronald Rogowski, *Commerce and Coalitions: How Trade Affects Domestic Political Alignments* (Princeton, N.J.: Princeton University Press, 1989).

³³ Jeffry A. Frieden and Ronald Rogowski, "The Impact of the International Economy on National Policies: An Analytical Overview," in *Internationalization and Domestic Politics*, ed. Robert O. Keohane and Helen V. Milner (Cambridge: Cambridge University Press, 1996).

³⁴ Peter M. Haas, "Do regimes matter? Epistemic communities and Mediterranean pollution control," *International Organization* 43, no. 03 (1989): 377-403.

³⁵ Thomas Risse-Kappen, *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures, and International Institutions* (Cambridge: Cambridge University Press, 1995); Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998); Alison Brysk, *From tribal village to global village: Indian rights and international relations in Latin America* (Stanford University Press, 2000).

³⁶ Craig Murphy, *International Organization and Industrial Change: Global Governance Since 1850* (New York: Oxford University Press, 1994); Martha Finnemore, *National Interests in International Society* (Ithaca, N.Y.: Cornell University Press, 1996).

In this context, a significant inverse relationship between international trade and levels of corruption is found in the literature. Closed economies are better mediums for the perpetuation of corrupt practices since they are disconnected from the market pressures of open economies. Companies that are more inclined to bribe-paying are the first to suffer under conditions of international competition. As Ades and di Tella explain, “competition from foreign firms reduces the rents enjoyed by domestic firms, and this reduces the reward from corruption.”³⁷ Domestic companies hence find themselves with fewer funds to offer and consequently public officials will find that their income deriving from corruption-related activities is in decline. Hence, greater international economic integration leads to lower levels of corruption. This argument provides a good regional explanation for why the new EU member states should overall register lower levels of corruption since they joined the Single Market and are integrated in the world economy at similar levels. Yet, it does not explain the variance in anti-corruption performance within the CEE region, and in particular why some states have registered a decline in the post-accession period, therefore we dismiss it from the outset.

Moreover, economic crises as a rule, expose institutional strengths and weaknesses of political systems that otherwise remain unnoticed.³⁸ Eurobarometer survey data (2008-2012) have shown consistently increasing distrust and reduced support for European institutions during the Eurozone crisis, a sufficient reason for national governments to move away from EU-promoted reforms and norms. A recent study proposed by Kartal finds that in the case of the EU new member states, the 2008 global financial crisis and the recent Eurozone crisis are not significant determinants of why

³⁷ Ades and Di Tella. "Rents, competition, and corruption," 987.

³⁸ Gourevitch, *Politics in Hard Times*.

some states have regressed in their anti-corruption efforts in the last decade even if theory might lead us to think they should.³⁹

Sandholtz and Gray argue that the more countries get involved in international organizations, the more likely it is that political elites would absorb the organizations' anti-corruption norms. This would then reduce the level of corruption.⁴⁰ In this context, numerous international organizations led by the World Bank and the OECD got involved in transnational anti-corruption campaigns. By 1997, anticorruption policies have become a strong leverage through the World Bank's loan conditionality instrument and have been emulated by most remaining international organizations.⁴¹ The activities that resulted, according to Sandholtz and Gray, led to the creation of a "rudimentary international anticorruption regime."⁴² Moreover, external international initiatives of this regime are gradually altering cultures of systemic corruption and educating societies to demand greater transparency, government accountability, and strong enforcement of laws and regulations.⁴³

A more context-specific argument states that the EU's ability to influence member countries' democratic reforms in the post-accession period is determined by these countries' dependence on EU trade.⁴⁴ Moreover, the literature is in disagreement on the role of foreign aid in sustaining democratic reforms. In this sense, Levitz and Pop-

³⁹ Mert Kartal, "Accounting for the Bad Apples: The EU's Impact on National Corruption Before and After Accession," *Journal of European Public Policy*, 21.6 (2014), 12.

⁴⁰ Sandholtz and Gray, "International integration and national corruption," 767.

⁴¹ Mark Pieth, "International Cooperation to Combat Corruption," in *Corruption and the Global Economy*, ed. Kimberly Ann Elliot (Washington, D.C.: Institute for International Economics, 1997).

⁴² Sandholtz and Gray, "International integration and national corruption," 774.

⁴³ Bertram Irwin Spector, ed., *Fighting corruption in developing countries: strategies and analysis* (Bloomfield, CT: Kumarian Press, 2005), 4.

⁴⁴ Phillip Levitz and Grigore Pop-Eleches, "Why no backsliding? The European Union's impact on democracy and governance before and after accession," *Comparative Political Studies* 43, no. 4 (2010a): 457-485.

Eleches (2010a) claim that EU's leverage over applicant and member states increases the more EU funding these countries receive while Knack (2000) argues that foreign aid does not contribute to better governance in targeted countries. Kartal argues in this context that despite being significant determinants during the candidacy period, EU trade along with EU aid are no longer effective in sustaining anti-corruption democratic reforms in the post-accession period.⁴⁵

To conclude, this theoretical framework would suggest that as the new EU member states integrate more in the international economic cycle as part of their European integration process, their domestic anti-corruption performance should improve.

1.2. EU Membership

The literature on Europeanization highlights the positive role of EU conditionality instrument on the democratic reforms undertaken by the CEE states in the pre-accession period.⁴⁶ In this sense, the EU is portrayed as an actor that played a significant role in adopting reforms that adhered CEE states to the European standards. The accession process influenced significantly the legal and institutional frameworks that respond for

⁴⁵ Kartal, "Accounting for the Bad Apples," 19.

⁴⁶ Antoaneta Dimitrova, "Enlargement, institution-building and the EU's administrative capacity requirement," *West European Politics* 25, no. 4 (2002): 171-190; Frank Schimmelfennig, *The EU, NATO and the Integration of Europe. Rules and Rhetoric* (Cambridge: Cambridge University Press, 2003); Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe," *International Organization* 59, no. 4 (2005): 827-860; Schimmelfennig, "European regional organizations, political conditionality, and democratic transformation in Eastern Europe," *East European Politics and Societies* 21, no. 11 (2007): 126-141; Milada Anna Vachudova, "Corruption and Compliance in the EU's Post-Communist Members and Candidates," *JCMS: Journal of Common Market Studies* 47, no. s1 (2009): 43-62; Judith G. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton: Princeton University Press, 2006); Lenka Bustikova, "The extreme right in Eastern Europe: EU accession and the quality of governance," *Journal of Contemporary European Studies* 17, no. 2 (2009): 223-239.

the control of corruption. Commission pressure in this regard has triggered important legislative changes, namely in areas of public procurement, criminal and civil procedure, anti-corruption legislation, and civil service legal frameworks.⁴⁷ Sedelmeier goes even further to argue that “all of the new member states outperformed virtually all of the old members during the first four years of membership.”⁴⁸

All aforementioned studies however employ an aggregate approach in their analysis, and disregard in this way the domestic context-specific institutional differences that exist among the CEE states that might influence the range of responses undertaken to contain corruption. Moreover, most of these scholars have addressed democratization in the CEE region by focusing on the pre-accession reforms and changes that were undertaken by these states in their rush for EU membership. Only few have published on the consolidation of democracy in the post-accession period.⁴⁹ Also, most of these studies have employed the individual case study approach hence making generalizations impossible to draw.

Furthermore, some scholars claim that the EU managed to do little to alter domestic habits, and many reforms have been “merely formalistic.”⁵⁰ In this context, Slapin argues that the mere formal adoption of laws during the EU accession process

⁴⁷ Open Society Institute, *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*, The Accession Monitoring Program (2002), 71.

⁴⁸ Ulrike Sedelmeier, “After Conditionality: Post-accession Compliance with EU law in East Central Europe,” *Journal of European Public Policy* 15, no. 6 (2008), 806.

⁴⁹ Antoaneta Dimitrova and Dimiter Toshkov, “Post-accession compliance between administrative co-ordination and political bargaining,” *European Integration online Papers (EIoP)* 2 (2009); Christoph Knill and Jale Tosun, “Post-accession transposition of EU law in the new member states: a cross-country comparison,” *European Integration online Papers (EIoP)* 13, no. 2 (2009); Alina Mungiu-Pippidi, “The Transformative Power of Europe Revisited,” *Journal of Democracy* 25, no.1 (2014): 20-32; Florian Trauner, “Post-accession compliance with EU law in Bulgaria and Romania: a comparative perspective,” *European Integration online Papers (EIoP), Special* 2 (2009); Kartal, “Accounting for the Bad Apples”; Sedelmeier, “After Conditionality”.

⁵⁰ Rasma Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (London: M. E. Sharpe, 2005), 144.

without an actual societal consensus can seriously undermine the rule of law by providing perverse incentives both for ordinary citizens and public officials.⁵¹ More generally stated, the EU influence vanished the day when these states joined the EU.⁵² Sedelmeier is somewhat more optimistic about the role of the EU by claiming that the EU can still retain some influence over the new EU member states after accession. This pressure depends on a combination of “the size of the material sanctions it can threaten and the size of the domestic costs of compliance.”⁵³ Yet, Sedelmeier uses only two cases, that of Hungary and Romania in a short period of 2012-2013 breaches of law, and therefore his conclusions cannot be generalized to other cases.

According to the OSI’s EU Accession Monitoring Report, the Union’s own expectations about what states had to do to meet the requirements of membership specifically in the field of control of corruption “have often been limited to the ratification of conventions, without soliciting more meaningful change.”⁵⁴ The EU itself lacked at that time comprehensive anticorruption policies. As a result, CEE states had the leeway to create and adopt solutions that met their own context-specific needs but had no consistent guidance on behalf of the EU, fact that made the process more difficult due to constantly emerging domestic conflicting interests.⁵⁵ The OSI Monitoring Report goes even further to state that “without meaningful and continuing enforcement [reforms] will not lead to lasting improvements; indeed, there is even a danger that ineffective measures

⁵¹ Jonathan B. Slapin, "How European Union membership can undermine the rule of law in emerging democracies," *West European Politics* 38, no. 3 (2015), 2.

⁵² Bernard Steunenberg and Antoaneta Dimitrova, "Compliance in the EU enlargement process: The limits of conditionality," *European Integration online Papers (EIoP)*, 11 (2007); Holger Moroff and Diana Schmidt-Pfister. "Anti-Corruption for Eastern Europe." Special Issue of *Global Crime*, 2010; Haughton, Tim. "When does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe." *Political Studies Review* 5, no. 02 (2007): 233-46.

⁵³ Sedelmeier, *Anchoring democracy*, 119.

⁵⁴ Open Society Institute, *Monitoring the EU Accession Process*, 11.

⁵⁵ Open Society Institute, *Monitoring the EU Accession Process*, 12.

will undermine the credibility of all anti-corruption efforts.”⁵⁶

Generally, this theoretical framework leads us to expect better anti-corruption performance of the CEE states, as they get closer to their EU accession. Yet the literature has not reached a consensus on the effects of EU membership on anti-corruption levels after accession.

2. Institutional determinants

Rose-Ackerman pleaded that anti-corruption research should center on “the institutional incentives facing officials and citizens to accept and to pay bribes.”⁵⁷ That is mostly because institutional change can contribute to the substitution of habits and patterns of corruption with those of accountability, according to neo-institutional accounts. Realigning incentives by increasing the risk to be prosecuted or lose seats in parliament as a consequence of voter dissatisfaction with officials’ behavior or action undertaken is hence seen as an imperative in decreasing corruption.⁵⁸

The predominant institutional argument in the literature is that weak institutions breed corruption.⁵⁹ Among the endless list of ineffective institutions, a particular attention is given to the checks and balances that should be put in place.⁶⁰ This brings us

⁵⁶ Open Society Institute, *Monitoring the EU Accession Process*, 11.

⁵⁷ Susan Rose-Ackerman, “Trust, honesty and corruption: Reflection on the state-building process,” *European Journal of Sociology* 42, no. 03 (2001), 51.

⁵⁸ Verena Blechinger, “Political Parties,” in *Fighting Corruption in Developing Countries: Strategies and Analysis*, ed. Bertram Spector (Bloomfield, CT: Kumarian Press, 2005), 40.

⁵⁹ Samuel Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968); Paul Heywood, “Political Corruption: Problems and Perspectives,” *Political Studies* 45, no. 3 (1997): 417-435; Rasma Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (London: M. E. Sharpe, 2005); World Bank, *Anticorruption in transition 3. Who is succeeding... and why?* (Washington DC: World Bank, 2006).

⁶⁰ Karklins, *System*, 105.

to the importance of eliminating monopolies of discretionary decision-making power, argument that has been highlighted by numerous scholars on corruption. Rose-Ackerman for instance puts forward an economic rationale behind the bureaucrats' behavior: these tend to behave as monopolists who take advantage of increasing prices generated by scarcity therefore it is critical to de-monopolize decision making if one wants to avoid worsening corruption.⁶¹

Klitgaard compresses Rose-Ackerman's argument into one "formula of corruption".⁶² Namely, he claims that limiting the monopoly of power of any public official, limiting the potential misuse of discretion by designing and adopting clearly balanced rules and codes of behavior for civil servants that make criteria for decision making clear with no space for maneuver, and strengthening accountability is key to controlling corruption.⁶³ In this sense he conceptualizes corruption as a fine equilibrium between monopoly of power, discretion of public officials, and accountability.

Mungiu-Pippidi (2015) builds on Klitgaard (1988) and Rose-Ackerman (1978; 2001) findings to propose an explanatory model of corruption. Conceptually the model represents also a fine equilibrium between opportunities (resources) for corruption and deterrents (constraints) imposed by state and society. The scholar defines *opportunities* as discretionary power due to monopoly as well as privileged access under specific power arrangements (for instance "negative social capital networks, cartels and other collusive

⁶¹ Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 1978), 90.

⁶² Robert Klitgaard, *Controlling Corruption* (Berkeley, CA: University of California Press, 1988).

⁶³ Klitgaard, *Controlling Corruption*, 75.

arrangements, poor regulation encouraging administrative discretion, lack of transparency turning information into privileged capital for power-holders and their relations”).⁶⁴

Mungiu-Pippidi further divides *deterrents* into legal and normative. In this sense, the *legal* constraints are the judiciary that is able to enforce the legislation, as well as a body of effective and comprehensive laws covering COI and enforcing a clear public-private separation. The *normative* deterrents imply that existing societal norms endorse public integrity and government impartiality, and permanently and effectively monitor deviations from that norm through public opinion, media, civil society, and a critical electorate.

Mungiu-Pippidi is not the first to highlight the role of legal constraints in explaining anti-corruption performance. In this regard, an independent and effective judiciary and the police are the main institutions charged in the literature with improving and ensuring legal accountability more generally.⁶⁵ Credible enforcement of penalties and compliance with the rule of law are crucial in containing corruption, in this sense. According to Della Porta, the judiciary plays a key role in punishing corrupt behavior when institutional checks and balances within the executive and the legislative are ineffective.⁶⁶ Internal control mechanisms suffer, in this context, from a “congenital

⁶⁴ Alina Mungiu-Pippidi, “The good, the bad and the ugly: controlling corruption in the European union,” *Advanced Policy Paper for Discussion in the European Parliament* (2013).

⁶⁵ Guillermo O’Donnell, “Horizontal Accountability in New Democracies,” *Journal of Democracy* 9, no.3 (1998): 112-28; Karklins, *System*; Bertram Irwin Spector, Phyllis Dininio, and Michael Johnston, “Learning Across Cases: Trends in Anti-Corruption Strategies,” in *Fighting Corruption in Developing Countries: Strategies and Analysis*, ed. Bertram Spector (Kumarian Press Inc., 2005); Tamir Moustafa and Tom Ginsburg, “Introduction: The Function of Courts in Authoritarian Politics,” in *Rule By Law: The Politics of Courts in Authoritarian Regimes*, ed. Ginsburg and Moustafa (Cambridge: Cambridge University Press, 2008).

⁶⁶ Donatella Della Porta and Alberto Vannucci, *Corrupt exchanges: Actors, resources, and mechanisms of political corruption* (Transaction Publishers, 1999).

weakness: *the vulnerability to collusion between controllers and controlled*, to the detriment of the public.”⁶⁷

The same principle is also valid for the control that elected officials should exercise over bureaucrats: political corruption also facilitates bureaucratic corruption insofar as politicians would seek to collude instead of denouncing illegal behaviors in the public administration. Della Porta (1999) shows based on the Italian case that political corruption is oftentimes intertwined with bureaucratic corruption. This leads Della Porta to argue for the role of external checks, and namely the judiciary, both on the executive and the legislature:

“when reciprocal controls between elected and career public administrators do not work, given that corrupt exchanges are breaches of the criminal law, the ‘natural’ adversary of corrupters and the corrupt is the magistracy. The latter performs, in fact, a decisive function in the control of corruption: any eventual punishment of corrupted politicians in political terms is tightly bound up with the existence and visibility of criminal prosecution.”⁶⁸

In line with Della Porta’s (1999) argument, Rose Ackerman (2007) also claims that the judicial branch plays a unique role in any society, as this sector plays a critical role in creating the conditions for anti-corruption and impartiality in all other areas in the public and private sectors. More generally, in cross country or international comparisons, concepts such as the ‘rule of law’ and ‘judicial independence’ are often stressed as important for aspect of quality of governance such as corruption.⁶⁹

O’Connor argues that there are two sides to judicial independence and therefore she differentiates between *institutional* and *decisional* judicial independence.⁷⁰ In

⁶⁷ Jon Elster, *Nuts and bolts for the social sciences* (Cambridge University Press, 1989), cited in Donatella Della Porta, “A judges’ revolution? Political corruption and the judiciary in Italy,” *European Journal of Political Research* 39, no. 1 (2001), 2.

⁶⁸ Della Porta and Vannucci, *Corrupt exchanges*, 131-132.

⁶⁹ Erik Voeten, “Politics of International Judicial Appointments, The,” *Chi. J. Int’l L.* 9 (2008), 387.

⁷⁰ Sandra Day O’Connor, “Vindicating the Rule of Law: The Role of the Judiciary,” *Chinese J. Int’l L.* 2 (2003).

addition to *institutional* independence, judges must also have *decisional* judicial independence.⁷¹ Decisional independence, according to O'Connor, "embodies the principle that judges should decide each case before them fairly, impartially, and not according to any personal bias or outside influence."⁷² In this sense, for the judiciary to be able to uphold the rule of law, it has to be "relatively free from outside interference" as a whole.⁷³

This latter argument raises the question of what ensures judicial independence and how it is treated in the literature more broadly. Judges' terms of office and their financial independence are highlighted more often than other arguments. According to the literature but also practical experience, justices have to be kept beyond the reach of influence of external actors. According to Alexander Hamilton, in the Federalist Papers, "next to permanency in office, nothing can contribute more to the independence of judges than a fixed provision for their support."⁷⁴ In this context, O'Connor along with other scholars argue that judges need to be appointed competitively and according to their qualifications to ensure both the independence and integrity of the judiciary:

"Security in pay and position frees judges to exercise their best legal judgment in applying the law fairly and impartially to the parties before them. As one federal district court judge [...] puts it, "[a] judge who is concerned that his or her rulings might affect his or her career is a judge who might lose focus on the most important of judicial duties: to maintain the rule of law."¹⁰ Judicial independence from the other branches of government through safeguards on position and salary is essential to a system in which judges make their decisions based on the law, rather than out of fear of reprisal. In short, an independent judiciary is the foundation that underlies and supports the Rule of Law."⁷⁵

Moreover, several studies have proven that terms of employment explain

⁷¹ Also referred to as *individual* independence.

⁷² O'Connor, *Vindicating the Rule of Law*, 3.

⁷³ O'Connor, *Vindicating the Rule of Law*, 3.

⁷⁴ Alexander Hamilton, The Federalist No. 79 (Clinton Rossiter ed., 1961), 472, cited in O'Connor, *Vindicating the Rule of Law*.

⁷⁵ O'Connor, *Vindicating the Rule of Law*, 3.

variation in institutional quality as well.⁷⁶ In this sense, fewer overlaps of interests between politicians and civil servants allow for fewer opportunities for collusion, more checks and balances between the two, and more incentives for mutual accountability. This separation of interests leads to the development of a more professional civil service. More recent studies, like Charron's,⁷⁷ find that similar to the professionalization happening in the civil service, open and competitive recruitment of judges is also highly correlated with judicial quality.

Charron (2015), moreover, makes the case that employment conditions for judges (salary and job tenure length) do not impact the quality and impartiality of the judicial branch, though the literature is divided on the issue. Becker and Stigler (1974) argue that relatively higher wages deter public servants from engaging in corrupt practices. On the contrary, Rauch and Evans (2000) and Dahlstrom et al. (2011) find salaries to have an insignificant role, while Van Rijckeghem and Weder (2001) conclude that more competitiveness for civil servant salaries is, in fact, negatively correlated with a country's level of corruption.

Furthermore, international standards are not univocal on the budgeting process for the judiciary more generally. Article 7 of the UN Basic Principles stipulates that the judiciary should be granted adequate resources, but does not suggest a specific process for how this should be managed.⁷⁸ The Universal Charter of the Judge (UCJ) on the other hand, requires that the judiciary is given the opportunity to "take part in or to be heard on

⁷⁶ See for example Carl Dahlström, Victor Lapuente and Jan Teorell, "The merit of meritocratization: Politics, bureaucracy, and the institutional deterrents of corruption," *Political Research Quarterly* 65, no. 3 (2012): 656-668.

⁷⁷ Nicholas Charron, "Weberian Civil Service Practices and Institutional Quality: Evidence from U.S. State Judicial Systems" (paper presented at Joint Sessions Meeting of European Consortium for Political Research, Warsaw, Poland, March, 2015).

⁷⁸ Article 7 of the UN Basic Principles cited in OSI, *Judicial Independence*, 46.

decisions” relating to its materials support.⁷⁹ To be able to balance the other two powers equitably, the judiciary hence needs to manage or at least have oversight authority of its budget. Additionally, the budget for the courts needs to correspond to a level that allows for effective and efficient administration of justice. According to the OSI Report on Judicial Independence:

“the judiciary’s freedom to operate independently can be seriously undermined if it is unduly beholden to other branches for its material well-being. Parliament can alter the overall funding of the courts; the executive can distribute funds unevenly among courts. Although it is normal – and entirely consistent with European practice – for the judiciary to receive funding solely through parliamentary appropriations and executive disbursements, these processes can be used to punish or reward courts for the behaviour of particular judges. The mere knowledge that this can happen may operate to discourage judges from ruling against the other branches’ wishes.”⁸⁰

Scholars underline in this sense that any punitive measures are useful only when they are implemented and enforced.⁸¹ In particular, when lawmaking is separated from judicial activity by granting powers to separate actors, the threat of potential “governmental arbitrariness” is significantly reduced.⁸² Moreover, if the judiciary’s not independent, most legal and programmatic mechanisms put forward to reduce corruption in other sectors of society will be significantly undermined.⁸³ If the judiciary does not take action on abuses of legislation on anticorruption, and if trials continue for years, “anticorruption legislation remains toothless.”⁸⁴ Concurrently, “establishing an independent judiciary without ensuring accountability can open the door to widespread corruption.”⁸⁵ Therefore, when corruption is rooted in the judiciary itself, and internal

⁷⁹ International Association of Judges, *Universal Charter of the Judge* (1999), Art. 7.

⁸⁰ Open Society Institute EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Independence*, 2001, www.eumap.org (accessed on November 16, 2016), 45.

⁸¹ Blechinger, “Political Parties.”

⁸² O’Connor, *Vindicating the Rule of Law*.

⁸³ Spector, *Fighting corruption in developing countries*.

⁸⁴ Spector, *Fighting corruption in developing countries*, 39.

⁸⁵ World Bank, *Anticorruption in transition 3. Who is succeeding... and why?* (Washington DC: World Bank, 2006), xiv.

accountability mechanisms fail, alternative dispute-resolution solutions should be found.⁸⁶

The role of specialization of bodies dealing with cases of corruption is highlighted as well in this literature. Both U.N. and Council of Europe standards highlight, in this regard, the necessity for specialization of prosecution, in particular. CM Recommendation 19 (2000) states that,

“In order to respond better to developing forms of criminality, in particular organized crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.”⁸⁷

There are however concerns, recorded in the literature, when it comes to setting up specialized anti-corruption institutions, such as courts. Among the most salient ones mentioned by the International Association of Prosecutors are the creation of an additional layer of ineffective bureaucracy, diversion of attention, resources, and responsibilities from existing control institutions, invocation of jurisdictional conflicts and turf battles with other institutions, and creation of possibility for its abuse as a tool against political opposition leaders.⁸⁸ In this sense, specialization units within the judiciary and prosecution are another salient aspect that defines the institutional independence of a judicial system. They make the investigation and prosecution process more efficient especially in complex and sophisticated cases of political corruption and organized crime. It is therefore analyzed in the three in-depth case studies to understand whether it can explain variation in anti-corruption performance as a defining aspect of

⁸⁶ World Bank, *Anticorruption in transition. A contribution to the policy debate* (Washington DC: World Bank, 2000).

⁸⁷ Council of Europe, Recommendation Rec(2000)19, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804be55a>

⁸⁸ <http://www.iap-association.org/NACP/Anti-Corruption-Models>

institutional judicial independence. The study expects to find more specialized units in states with improving or stable anti-corruption performance.

According to World Bank data (2006) on institutional reforms undertaken in the CEE region up to 2004, areas that have been prioritized by policy-makers have predictably shown better performance, while those areas that were “the most complicated” or “beset with conflicting objectives” have proven fewer positive results.⁸⁹ The report does not specify which these specific areas were nor does it shed light on the conflicting objectives surrounding them. Another report, the OSI EU Monitoring Report (2002) identifies a list of areas that were assessed to have received least attention on behalf of the EU in the pre-accession reform process that the CEE states undertook (see Table B.2). “Where reform has been most urgently needed, lasting reductions in corruption have been elusive.”⁹⁰ This study hence assumes that the institutions that have been subjected the least to reforms during the pre-accession period, mostly the judiciary but not only, are the region’s Achilles heel. These areas, which can be identified separately for each country, are most vulnerable to corruption and reform backsliding.

According to Karklins, in post-communist societies there is often plenty of anti-corruption legislation. However, it is not the right kind of legislation.⁹¹ According to Sajo, the beneficiaries of the political status quo have mobilized each time the proposed

⁸⁹ World Bank. *Anticorruption in transition* 3, xv.

⁹⁰ Michael Johnston, *Corruption, contention and reform: the power of deep democratization* (Cambridge University Press, 2014), 1; Alina Mungiu-Pippidi, “Corruption: diagnosis and treatment,” *Journal of Democracy* 17, no.3 (2006): 86–99; Nancy Birdsall, “Do no harm: Aid, weak institutions and the missing middle in Africa,” *Development Policy Review* 25, no. 5 (2007): 575-598; Department for International Development, *Building Peaceful States and Societies: A DFID Practice Paper* (London: DFID, 2009); United Nations Department of Economic and Social Affairs, *Reconstructing Public Administration after Conflict: Challenges, Practices, and Lessons Learned* (New York: United Nations, 2010).

⁹¹ Karklins, *System*, 33.

reforms were meant to hurt the incumbent political elite. Hence, the more promising the proposed measure, the less chances it had to be implemented.⁹² Another way to misuse legislative power was to create confusing and contradictory legislation, which also promotes corruption.⁹³ This type of legislation can be partially the result of disorganization that stems from the overall process of transition⁹⁴ but also due to the rapid process of adoption of the *acquis communautaire* by the CEE new EU member states. Corruption as a consequence, according to Klitgaard, “thrives on disorganization.”⁹⁵

Extortionist bureaucrats, in his understanding, deliberately over-regulate, and obfuscate rules, procedures, and regulations, to create more space for bribe offering. Hence, excessive regulation especially when combined with excessive discretion in decision-making on specific issues is conducive to increased corruption.⁹⁶ The question that immanently derives from this theory is whether the CEE states have the right kind of institutions in place that set up effective checks and balances, and reduce hence opportunities for corrupt behavior. Moreover, can it be that by adopting the *acquis communautaire* some states still have not fully harmonized their domestic legislation on anticorruption? Are the effects of contradictory regulations only starting to be felt in the post-accession period?

To conclude, the institutional school of thought states that one can prevent corruption by designing and implementing appropriate institutional structures,

⁹² Andras Sajó, “Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe.” *East European Constitutional Review* 7, no. 2 (1998), 15.

⁹³ Federico Varese, “The Transition to the Market and Corruption in Post-socialist Russia,” *Political Studies* 45, no. 3 (1997): 579-596.

⁹⁴ Karklins, *System*.

⁹⁵ Klitgaard, *Controlling Corruption*, 79.

⁹⁶ Daniel Kaufmann, Sanjay Pradhan and Randi Ryterman, *New Frontiers in diagnosing and combating corruption* (World Bank, 1998).

procedures, and incentives. If we apply the existing theory to the EU post-accession phase for new CEE member states, corruption is likelier to reemerge when representative processes designed to strengthen government accountability (i.e. restructuring party authority, strengthening internal party democracy, changing the external framework of party activity) are weak, and when the mechanisms meant to dismiss policymakers and bureaucrats that display corrupt practices are either missing or ineffective.⁹⁷ Finally, another conclusion is that institutional solutions must be based on a careful assessment of the political context of a specific state.⁹⁸ Now that the rush for EU membership is over, if we look back to the anticorruption legislation that has been rapidly adopted, how appropriate are the institutions put in place and how well do they fit to the idiosyncrasies of the political contexts of CEE states? Answering this question amongst others will help explain why some states are better at controlling political corruption than others.

3. Political determinants

From the previous section it is clear that weak institutions are conducive to increased corruption. The literature on institutions however does not give convincing answers to why certain institutional areas dealing with corruption issues are more difficult to reform than others, especially in the context of the CEE region. Many scholars refer to the political factors that hinder the consolidation of stronger anti-corruption institutions. These are reviewed in this section below.

⁹⁷ Blechinger, "Political Parties," 36.

⁹⁸ Karklins, *System*, 113.

Political parties are portrayed as being at the center of the corruption problem both in developing and industrialized societies.⁹⁹ These play a special role in newly democratizing states where institutions are not yet consolidated. The internal political system in this sense delineates the incentives and establishes the limits within which anticorruption policies and institutions are adopted. Blechinger argues that in political party systems with weak party competition, or in states with long-term one-party rule and party control over the public sector and society, parties are especially tempted to extort contributions from businesses.¹⁰⁰ Therefore transparent campaign finance regulations that cover general activities of political parties, not only during the campaign periods, are seen as an important step contributing to healthier political competition. Furthermore, more intensive party competition that can be translated either in increased government turnover or amplified party fragmentation in parliament, is found to be helpful for deterring corrupt behavior. One theoretical rationalization is that strong political competition pushes policymakers to start containing corruption to safeguard their next stay in office as anti-corruption issues become salient on the public agenda.¹⁰¹

Moreover, parties in the legislature need to be monitored. This supervision can derive either from an active political opposition, strong internal control mechanisms, or an active and informed citizenry. Oversight is necessary especially in younger democracies because parties that are more confident in their grip on power have a higher chance of using extralegal means of accumulating personal wealth and abusing power while in office. According to Waterbury (1993), the more a regime seeks to strengthen its political and administrative capacities, the more prospects for corruption simultaneously

⁹⁹ Blechinger, "Political Parties."

¹⁰⁰ Blechinger, "Political Parties," 31.

¹⁰¹ Blechinger, "Political Parties," 31.

develop. A quick enlargement of the state bureaucratic apparatus produces numerous opportunities for officeholders to translate authority into personal gains. Furthermore, the more influence a political party has over public institutions and societal actors the higher the probability for it to engage in acts of corruption. Literature also expects that corruption is higher in states where incumbent parties are likely to lose upcoming elections or where political leaders are not allowed to run for reelection according to their country's electoral code.¹⁰²

Party discipline is another determinant of increased corruption in the context of party activity in parliament.¹⁰³ Intra-party control mechanisms can be employed to pressure party members to advocate for the agendas of affluent organized interest groups. It can also be employed to silence disapproval of corrupt activities within the party or on behalf of certain party members.¹⁰⁴

Strong political will consequently is another determinant of anticorruption reforms that is highlighted in numerous literature sources.¹⁰⁵ If the political leadership does not have the stimulus for reform, early successes may only foreshadow later backsliding and recorruption.¹⁰⁶ Reforms are also less likely to endure when the catalyst for anticorruption reforms derives from domestic pressure alone.¹⁰⁷ Moreover, the shared effects of anticorruption reforms can mobilize powerful stakeholders to safeguard vested interests.

¹⁰² Blechinger, "Political Parties," 32.

¹⁰³ Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (New York: Cambridge University Press, 1999), 129.

¹⁰⁴ Blechinger, "Political Parties," 33.

¹⁰⁵ World Bank, *Anticorruption in transition 3*; Mark Levin and Georgy Satarov, "Corruption and Institutions in Russia," *European Journal of Political Economy*, 16 (2000): 113-32; Scott Fritzen, "Beyond 'political will': how institutional context shapes the implementation of anti-corruption policies," *Policy and Society* 24, no. 3 (2005): 79-96; Mungiu-Pippidi, "Corruption: diagnosis and treatment."

¹⁰⁶ Spector et al., "Learning Across Cases," 223.

¹⁰⁷ Spector et al., "Learning Across Cases," 227.

Since the political will can undergo alternate ups and downs depending on the changing political circumstances, reform strategies must be designed in such way to support leaders' determination to push them through.¹⁰⁸ Coalition building in particular, according to Johnston and Kpundeh (2002) can connect and bolster the political will and civil society. Hence for anticorruption reforms to be sustainable when driven by the executive, the crucial test is to secure a base for support emerging from outside the government. Establishing channels for citizen participation in government can do this. However, in the context of reforms driven from outside the executive, the fundamental challenge is to strengthen reform sustainability primarily by investing in prevention and education, and in expanding support, especially among public servants.¹⁰⁹

Another factor identified in the literature as intensely stimulating corruption is the persistence of "bad" social capital and namely of informal networks that give rise to an unhealthy relationship between the political and economic elites.¹¹⁰ Enduring loyalties of state bureaucrats to their long-established personal connections to current or former party and government officials is one type of this "bad" social capital. These resilient ties impede the formation and consolidation of new effective institutions and competitive market economies. Moreover, these ties are proliferated in the reformed communist and newly established democratic parties which are often part of corrupt networks, mainly in the situation when party leaders and their party's survival depend on the financial support

¹⁰⁸ Derick Brinkerhoff and Nicolas P. Kulibaba, *Identifying and Assessing Political Will or Anti-Corruption Efforts* (No. 13. Working Paper, 1999); Sahr Kpundeh, *Political Will* (Unpublished manuscript, 1997).

¹⁰⁹ Phyllis Dininio, "The Risks of Recorruption," in *Fighting Corruption in Developing Countries: Strategies and Analysis*, ed. Bertram Spector (Bloomfield, CT: Kumarian Press, 2005), 248.

¹¹⁰ Alena Ledeneva, *How Russia Really Works* (Ithaca, NY: Cornell University Press, 2006); William Lockley Miller, Åse B. Grødeland and Tatyana Y. Koshechikina, *A Culture of Corruption: Coping with Government in Post-communist Europe* (Budapest: CEU Press, 2001); Karklins, *System*.

of influential oligarchic groups.¹¹¹ Blechinger is hence arguing that in order to eliminate corruption in political parties, reforms have to address both the governing regime with which parties interact and internal party governance.¹¹²

This literature suggests that weak institutions are set up in governance areas where no political consensus was achieved due to conflicting interests in the areas that generate most revenues and bare the highest costs for reform. One instance is the judiciary. According to Widner and Sher (2008), in states where corruption at upper level predominates (the situation of most CEE states), effective courts are very inconvenient to the political elite. Mungiu-Pippidi also finds that the “EU countries which have succeeded in building very effective control of corruption in Europe have done so by means of different institutional arrangements for their systems of prosecution and their judiciary arrangements.”¹¹³ In this sense, we can assume that the judiciary, including prosecution, has never been genuinely reformed in some states because of the potentially high costs its reform presents to the political elite. Following the rationale of this example, we can assume that each of the new member states has its own Achilles heel, due to the specific constellation of domestic political powers that represents a continuous source of corruption.

4. Economic determinants

¹¹¹ P.J. O'Rourke, “The Godfather decade: an encounter with Post-Soviet corruption,” *Foreign Policy*, no. 121 (2000 Nov.): 74-80; Adrian Karatnycky, “Nations in Transit: emerging dynamics of change,” in *Nations in Transit 2001*, eds. Adrian Karatnycky, Alexander Motyl, and Amanda Schnitzer (Washington, D.C.: Freedom House, 2001); Janine R. Wedel, *Clans, cliques, and captured states: rethinking 'Transition' in Central and Eastern Europe and the Former Soviet Union* (Helsinki: United Nations University, World Institute for Development Economics Research, 2001).

¹¹² Blechinger, “Political Parties,” 36.

¹¹³ Alina Mungiu-Pippidi et al., “Controlling corruption in Europe,” (2013), 40.

Another strand of literature on corruption has identified a strong correlation between the economic development level of a state and its anti-corruption performance.¹¹⁴ In this sense, wealthier states do have better institutions and register lower levels of corruption. Yet, the vector of causality runs both ways.¹¹⁵ Corruption does hamper growth levels by reducing the efficiency of the state and the attractiveness of the investment climate. However, at the same time, poorer states find it more difficult to address corruption issues in the first place due to economic and political benefits this phenomenon provides in the first place.

Peter Eigen analyzes the relationship between corruption and powerful economic elites. He concludes that “oligarchy gives rise to corruption” but a reverse arrow of causality is equally possible.¹¹⁶ A phenomenon strongly related to the power of oligarchic groups is that of institutional capture or “state” capture. It refers to an elite cartel of political and business oligarchs able to manipulate the policy formation process, and “even shape the emerging rules of the game to their own, very substantial advantage.”¹¹⁷ By capturing entire state institutions they are able to block reforms from being adopted, and hence “the capture economy is trapped in a vicious circle in which the policy and institutional reforms necessary to improve governance are undermined by collusion between powerful firms and state officials who reap substantial private gains from the

¹¹⁴ Paulo Mauro, “Corruption and Growth,” *Quarterly Journal of Economics* 110, No.3 (1995): 681-712; Treisman, “The causes of corruption.”

¹¹⁵ Mauro, *Corruption and Growth*; Robert E. Hall and Charles Jones, “Why Do Some Countries Produce So Much More Output per Worker than Others?” *Quarterly Journal of Economics* 114, no. 01 (1999): 83-116; Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobaton, *Aggregating governance indicators*, (Vol. 2195. World Bank Publications, 1999); Daniel Kaufmann and Aart Kraay, *Growth without Governance* (Washington, D.C.: World Bank, 2002).

¹¹⁶ Peter Eigen, “Combatting corruption around the world,” *Journal of Democracy* 7, no. 1 (1996), 160.

¹¹⁷ Karklins, *System*, 29.

continuation of weak governance.”¹¹⁸ This is an issue of concern especially in former communist states where old power holders survived the change of regimes and continue to hold onto the accumulated power.¹¹⁹ Over the long term though the risk of state capture diminishes as states become economically better off.¹²⁰

A more recent study highlights the importance of economic preferences in the CEE region as determinants of anti-corruption performance.¹²¹ Eastern European governments that favor “Soviet-type economic policies”, as Kartal argues, are more likely to register increased corruption scores after accession.¹²² Such policy preferences are making anti-corruption reforms more difficult to implement since a less competitive economy creates more opportunities for rent seeking, and cuts back on government accountability.¹²³

Kartal’s thesis is appealing especially because he also challenges with it the Levitz and Pop-Eleches (2010a) argument on the positive effects of economic liberal policies on control of corruption in CEE states. He argues that the positive effect identified by Levitz and Pop-Eleches holds only during the candidacy period and turns negative and insignificant after accession.¹²⁴ Yet, the weak aspect of Kartal’s argument is how he operationalizes one of his key explanatory variables, the Soviet-type economic

¹¹⁸ Joel Hellman and Daniel Kaufmann, “Confronting the Challenge of State Capture in Transition Economies,” *Finance and Development* 38, no. 03 (2001), 31-32.

¹¹⁹ John Higley, Judith Kullberg and Jan Pakulski, “The Persistence of Postcommunist Elites,” *Journal of Democracy* 7, no. 2 (1996): 133-147.

¹²⁰ World Bank, *Anticorruption in transition* 3, 29.

¹²¹ Kartal, “Accounting for the Bad Apples.”

¹²² Kartal, “Accounting for the Bad Apples,” 38.

¹²³ Patrick Glynn, Stephen J. Kobrin and Moises Nairn, “The Globalization of Corruption,” in *Corruption and the Global Economy*, ed. Kimberly Ann Elliott (Washington, D.C.: Institute for International Economics, 1997); Alina Mungiu-Pippidi and Elena Dusu, “Civil society and control of corruption: assessing governance of Romanian public universities,” *International Journal of Educational Development*, 31 (2011): 532–546; Daniel Treisman, “Postcommunist corruption,” in *The Political Economy of Transition and Development: Institutions, Politics and Policy*, eds. Nauro Campos and Jan Fidrmuc (Dordrecht: Kluwer Academic Publishers, 2003).

¹²⁴ Levitz and Pop-Eleches, “Why no backsliding?” 952.

preferences. By referring to “long-standing central planning” as a policy still pursued by some CEE states, Kartal disregards the fact that a key Copenhagen condition for the CEE states to be granted EU membership was to transform their economies from planned to market. Moreover, by exemplifying trade protection policies and strong government control as Soviet-type government economic preferences of the new CEE member states, Kartal confuses these governments’ preferences for more general protectionist policies rather than Soviet-type policies. This is especially important since protectionist policies became more popular in many EU states, not only in the CEE region, especially with the beginning of the financial crisis in 2008 and onward, the period in Kartal’s study that he considers as being an original extension to already existing studies.

In light of the questions raised in this study, this theoretical framework leads us to expect that states that registered increased economic growth had eventually improved their anti-corruption performance. Sandholtz and Koetzle (2000) however argue that material incentives are not the only determinants of corrupt behavior. They bring in the role of socio-cultural determinants that also enter into choices about corrupt acts, a powerful school of thought to be analyzed in the section to follow.

5. Socio-cultural determinants

The last but not the least influential series of arguments in this literature review of corruption highlights the importance of socio-cultural factors. Johnston claims in this regard that cultural standards play a salient role in defining the “working meaning and the

social significance of corruption.”¹²⁵ Moreover, for the legal reforms to be effective, they have to be closely associated with a society’s cultural standards and values. In the same culturally framed approach, Karklins argues that an effective containment of corruption should embed the reality of the communist legacy in the CEE region.¹²⁶ According to the scholar, the lack of determination to adopt firm reforms addressing corruption as well as the lack of political will is directly related to the role and influence of “corrupt networks and old-time habits of mutual covering up and evasion of responsibility” that were widespread across the region during the Soviet era, and can still be noticed.¹²⁷

Karklins explains that numerous unseen benefits that influenced the personal well-being of individuals were directly tied to their workplace during the communist era. These have been carried over within various spheres of work during the transition period. In this context, Karklins highlights the existence of a disturbing culture of corruption within the civil service that might be impeding government accountability.¹²⁸

Ledeneva’s study on informal practices addresses this culture of corruption. The scholar argues that informal practices represent salient indicators of the workings of formal institutions therefore they should be studied more thoroughly.¹²⁹ Other studies claim that informal practices are both supportive and subversive of post-communist institutions. Moreover, they represent not only a cause but also a consequence of the

¹²⁵ Michael Johnston, “Corruption as a Process,” in *Coping with Corruption in a Borderless World*, eds. Maurice Punch et al. (Dordrecht: Kluwer Law and Taxation Publishers, 1993), 52.

¹²⁶ Karklins, *System*, 58.

¹²⁷ Karklins, *System*, 10.

¹²⁸ Karklins, *System*, 62.

¹²⁹ Alena Ledeneva, “A Critique of the Global Corruption Paradigm,” in *Postcommunism from Within: Social Justice, Mobilization, and Hegemony*, eds. Jan Kubik and Amy Linch (New York: New York University Press, 2013), 321.

ineffectiveness of formal institutions.¹³⁰ Ledeneva also claims that local framing is critical for the interpretation of informal practices and understanding of their impact on the society at large.¹³¹

In this context, numerous sources highlight the importance of a strong and committed civil society and free media in monitoring and holding government officials accountable. Public oversight and the demand for accountability are portrayed as core features of consolidated democracies and rule of law.¹³² Moreover, no anti-corruption campaign can genuinely succeed without support deriving from the civil society.¹³³ In this respect, the role of the media and civil society groups that act as watchdogs to monitor the performance of policymakers, alongside with administrative review bodies within the governmental structure, are considered to be salient constraints on corrupt behavior at high levels.¹³⁴

Statistical findings show a strong correlation that exists between free media and reduced corruption.¹³⁵ The mechanism that is at work, according to Schmidt-Pfister and Moroff, relies on the added value of corruption scandals that are investigated and made public by media outlets that subsequently help opposition parties in winning additional

¹³⁰ Ase Berit Grodeland, "Informal Networks and Corruption in the Judiciary: Elite Interview Findings from the Czech Republic, Slovenia, Bulgaria, and Romania" (paper presented at the World Bank conference "New Frontiers of Social Policy," Arusha, Tanzania, December, 2005); Julia Kuznir, *Informal networks and corruption in post-socialist societies* (Koszalin, 2006); Alena Ledeneva, *How Russia Really Works* (Ithaca, NY: Cornell University Press, 2006); Mungiu-Pippidi, "Corruption: diagnosis and treatment."

¹³¹ Ledeneva, *How Russia Really Works*, 319.

¹³² Karklins, *System*, 35; Open Society Institute, *Monitoring the EU Accession Process*; Mungiu-Pippidi, "The Transformative Power of Europe Revisited."

¹³³ Frederick Stapenhurst and Sahr J. Kpundeh, "Public participation in the fight against corruption," *Canadian Journal of Development Studies/Revue canadienne d'études du développement* 19, no. 3 (1998), 501.

¹³⁴ Karklins, *System*, 106.

¹³⁵ Karklins, *System*, 109.

support from the electorate.¹³⁶ Moreover, according to Karklins, “the media and the public pressure have proven to be the most effective in fostering reforms.”¹³⁷

Furthermore, if we analyze the WGI indicators, we see a strong association between the freedom of the press and anti-corruption performance (see Figure B.3). Walter Lippmann, in this context, calls the media the “fourth estate”, or a “watchdog” that offers additional checks and balances with regard to the existing political and economic power.¹³⁸ Other scholars, similarly, characterize the media as “guard dog” by highlighting their dependence on the existing institutional framework for “access, laws, and even legitimization.”¹³⁹ Moreover, according to Gross,

“The media dependency theory seeks to address the relationship between the media and other institutions, as well as their more functionalist role, through which, among other adaptive and integrative functions, the media resolve all problems connected to the ‘ambiguity threat and social change’, although the theory is insufficiently specific and comprehensive to have any exceptional applicability to Eastern Europe.”¹⁴⁰

Further, Lawson argues that the media, in the particular cases of young democracies, play a critical role “in shaping public opinion and guaranteeing... the accountability of government officials.”¹⁴¹ Also, “[p]romoting civil society, provoking scandal, and boosting support for opposition parties”, according to Lawson, are usual consequences characteristic to media opening.¹⁴²

¹³⁶ Diana Schmidt-Pfister and Holger Moroff, eds. *Fighting Corruption in Eastern Europe: A Multilevel Perspective* (Routledge, 2012), 68.

¹³⁷ Karklins, *System*, 145.

¹³⁸ Walter Lippmann, *The Phantom Public* (New York: Macmillan, 1927); Walter Lippmann, *The Public Philosophy* (New York: Mentor, 1955);

¹³⁹ George Donohue, Clarice Olien, and Phillipp Tichenor, “A ‘Guard Dog’ Conception of Mass Media” (paper presented at the Association for Education in Journalism and Mass Communication Conference, held in San Antonio, Aug 1987) cited in Peter Gross, *Entangled evolutions: Media and democratization in Eastern Europe* (Woodrow Wilson Center Press, 2002), 27.

¹⁴⁰ See more in Melvin DeFleur and Sandra Ball-Rokeach, *Theories of Mass Communication*, 5th ed. (New York: Longman, 1990), 27.

¹⁴¹ Chappell Lawson, *Building the fourth estate: Democratization and the rise of a free press in Mexico* (University of California Press, 2002), 2.

¹⁴² Lawson, *Building the fourth estate*, 196.

The socio-cultural approach leads us to expect that states that managed to set up an independent media and create a vibrant civil society in the early '90s and the pre-accession period should display better performance indicators at controlling corruption. In this context, this theoretical framework leads us to expect that states that managed in the pre-accession period to develop strong and independent monitoring and oversight mechanisms able to keep accountable the political power are more effective at containing corruption after accession.

The Time Factor

Numerous scholars highlight the importance of gradual change. Corruption is a pervasive and resilient form of human behavior motivated by the benefits it provides. In this sense, long-term changes require perseverance and commitment of political leaders, citizens, and the mass media over the long term not only to consolidate political and economic institutions able to contain corruption, but also to educate the public to internalize the benefits of a transparent society.¹⁴³ In the same flow of ideas, the World Bank has identified that current “levels of corruption are more closely correlated with the anticorruption institutions in place in 1995 than they are with those put in place more recently, a reminder that progress takes time.”¹⁴⁴ In this context, this study analyzes the evolution of anti-corruption reforms and institutions during a time span of two decades, 1991-2014, to embed also the factor of time as a determinant of anticorruption progress. In light of this argument, states that have passed institutional anti-corruption reforms in

¹⁴³ Spector, *Fighting corruption in developing countries*, 4-5.

¹⁴⁴ World Bank, *Anticorruption in transition* 3, xvii.

the early 1990s are expected to register better anti-corruption performance after accession than those that adopted reforms at a later stage.

II. Assessing main theoretical approaches

After a brief review of the existing literature on corruption, with particular focus on the CEE region, it is evident that all five schools of thought discussed above carry major explanatory power. Yet it is difficult to discern which factors are sufficient to contain corruption particularly after EU accession, and subsequently keep it at sustainable levels. Also, it is challenging to differentiate how these factors operate in specific contexts since most of the studies employ a large-N method of analysis that do not take into account cross-national contextual differences. This gap in the literature is highlighted by the inclusion of more recent panels on corruption at APSA 2015 Annual Conference¹⁴⁵, and regional workshops carried out under the ECPR guidance in 2015¹⁴⁶. This section of the chapter hence aims to reduce the number of explanatory variables by analyzing general empirical facts in the eight new EU member states and how they refer to the aforementioned theoretical frameworks.

From the *international determinants* of corruption, factors such as the level of economic integration, economic crises, and international organizations are the ones that stand out the most in the literature. They do not offer much added value however when

¹⁴⁵ APSA website <http://community.apsanet.org/annualmeeting/home>, accessed July 2015.

¹⁴⁶ ECPR website <http://ecpr.eu/Events/PanelDetails.aspx?PanelID=2504&EventID=90>, accessed July 2015.

we aim to explain why some states, such as Poland and Estonia have consolidated their pre-accession efforts on corruption, while others like Slovakia and Hungary have registered backsliding on the same indicator. In this sense, all eight states have been strongly integrated in the global economic and financial institutions as part of their path to EU membership. They all became members of the Single Market, enhanced their competition potential by becoming part of the World Trade Organization (WTO), and generally reformed their socialist-type economies. According to the Global Competitiveness Report for 2014-2015, the Czech Republic is ranked six places higher than Poland, yet it is doing worse in terms of containing corruption¹⁴⁷. In the 2005 edition of the same Report, compared to itself the Czech Republic was placed one position lower than in 2014, yet it was more efficient at controlling corruption in 2005 according to the WGI indicators¹⁴⁸. The level of economic integration in this regard does not predict well post-accession anti-corruption performance. Therefore we can reject this as an explanation for the variation in anticorruption performance among CEE states that we are seeking to explain.

Furthermore, if we measure the impact of economic crises as the drop in GDP per capita, and we analyze the data for 2004-2014 for the CEE region, we repeatedly notice a lot of discrepancies in terms of potential explanatory conditions. It is evident that all the new EU member states have been hit hard by the economic recession with very few exceptions. Yet, only some states have registered significant backsliding on corruption indicators. For instance, Estonia has registered a significant drop in GDP per capita in

¹⁴⁷ World Economic Forum, <http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/>, accessed July 2015.

¹⁴⁸ World Economic Forum, http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/GCR_05_06/GCI_Rankings_pdf.pdf, accessed January 2017.

2008-2010 but its corruption indicator is constant for the same period both according to Freedom House and WGI Reports. Lithuania, another example, has also experienced a significant drop in GDP during the recession, but unexpectedly has improved on its anti-corruption performance indicators, according to the same reports. On the other hand, Slovakia has not been hit as hard as other states in the region, yet it has registered a significant backslide in its ACP indicators. Again, even though theory leads us to expect an association of these two factors, the empirics show a different picture, and therefore we can reject this argument from the pool of plausible explanations.

If we analyze the role of international organizations on ACP in the CEE region, EU significantly stands out in the literature as a major player. In this sense, we clearly see its impact on pre-accession achievements but less so on post-accession developments. As an example, the EU managed to bring five of the newer member states (Czech Republic, Slovakia, Poland, Lithuania, and Latvia) to very similar ranking scores, according to WGI, but their trajectories diverge after 2004 (see Figure B.4). Moreover, since all eight cases are EU member states now, but register varied performance in terms of anti-corruption control, it is difficult to attribute any determinant role to the Union in shaping post-accession anti-corruption developments. To conclude, the international determinants provide weak contextual explanations to why we observe this variance in ACP in post-accession years, and therefore we can reject it as a probable explanation.

If we look at a different school of thought, the *socio-cultural determinants* do not provide an entirely convincing account of explanations either. The neo-institutionalist assertion that political attitudes and behavior should not be treated as a constant in anti-

corruption studies¹⁴⁹ represents a strong claim regarding the diminished role of cultural practices. Karklins argues that newly established institutions, in this case the institutions created in the process of transition and EU accession, have the capacity to gradually shape both attitudes and behavior of citizens and government officials, and therefore cultural attitudes toward corruption cannot be considered as invariable across time. Moreover, the greater exposure to the West of the political elites and the border-free travel and work in other EU states by ordinary citizens are proven to have gradually contributed to greater diffusion of democratic attitudes and values in the CEE space.¹⁵⁰ In this context, the socialization effects of the EU through mechanisms such as social learning are likely to contribute to a more active and demanding civil society with reduced incentives for practicing corrupt behavior.¹⁵¹

Moreover, since we focus on a particular region that displays a very similar historical cultural background and a common communist legacy, the existent long-term cultural continuities should display somewhat similar effects on all eight cases in this study. Yet, we do see differences in anti-corruption performance even within sub-regions. For instance, in the Baltics, while Estonia became a clear leader in anti-corruption performance since the early 1990s and continued improving its performance steadily afterwards, Lithuania and Latvia display somewhat different trajectories. Moreover, while still improving their anti-corruption scores after EU accession, the late 2000s have been not very clear for Latvia, in particular, in terms of sustainability of previous

¹⁴⁹ Karklins, *System*.

¹⁵⁰ Levitz and Pop-Eleches, "Monitoring, money and migrants: countering post-accession backsliding in Bulgaria and Romania," *Europe-Asia Studies* 62, no. 3 (2010b): 461-479.

¹⁵¹ Jeffrey T. Checkel, "International institutions and socialization in Europe: Introduction and framework," *International organization* (2005): 801-826; Levitz and Pop-Eleches, "Monitoring, money and migrants."

achievements. These intraregional differences in an area that shares a very similar historical and cultural background cast doubt on the validity of this theoretical argument. Finally, societal attitudes are not static. Political culture is dynamic and changes over time especially in situations of major regime transitions such as the demise of the Soviet regime, when policies change, social and economic conditions. New institutions can shape new political attitudes and behaviors.¹⁵²

Furthermore, within this school of thought studies demonstrate the critical role of the media and civil society as watchdog institutions shedding light on corrupt acts of the political elites. These have been proven to be of utmost importance in various settings around the world. In the context of the CEE region however, its impact on determining anti-corruption performance is not as clear from a first glance. In the CEE region during the Soviet era, any power deriving outside of the state apparatus has been excluded from public life and brought to silence to different degrees across the region. In an accurate and detailed assessment of reforms implemented in the pre-accession period by the new EU member states, OSI experts argue that civil society, suffered tremendously under Soviet rule. It was “destroyed or excluded from public life” in various degrees during communism. Therefore it is not strong enough to play a significant role in explaining anti-corruption performance.¹⁵³ In this context, the Soviet period still proves strong reverberations over the role and participation of civil society in public life today.

In this context, it is worth mentioning that civil society was only formally consulted on the anti-corruption strategies and mechanisms put in place in most of these

¹⁵² Karklins, *System*, 60-61.

¹⁵³ Open Society Institute, *Monitoring the EU Accession Process*, 44.

societies in the pre-accession phase. Feedback stemming from civil society was not taken into account in this top-down reform process, since the only actor who held these transition regimes accountable was the EU. Nowadays, there is almost no support from the EU for an independent media or civil society watchdogs.¹⁵⁴

The literature on target compliance also highlights the role of regular citizenry by claiming that “anti-corruption laws fail in CEE at least in part because they can be expected to elicit only limited support from the citizens whose behavior they seek to change.”¹⁵⁵ In this context, the author stresses the importance to also analyze the role of the citizens in perpetuating the problem rather than merely blaming national governments and public administrations for poor delivery of specific policy outcomes.

For the purpose of this study, it is important to differentiate the role that these factors played in fostering reforms vis-à-vis ensuring reform sustainability. A committed citizenry and an independent media are efficient at bringing short-term attention to the existing corruption issues. Moreover, they are effective only when they are financially and ideologically independent. However, without the intervention of law enforcement institutions these watchdog efforts of revealing corrupt behavior can easily fade away.

Moreover, according to Benson and Baden, *external* types of control such as the mass media or the public opinion are problematic control and oversight mechanisms from the perspective of their effectiveness because of the “public good” character of their results: the incentives for citizens to combat illegal behavior may prove insufficient.¹⁵⁶

¹⁵⁴ Alina Mungiu-Pippidi, “The Transformative Power of Europe Revisited,” *Journal of Democracy* 25, no. 1 (2014), 30.

¹⁵⁵ Agnes Batory, “Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective,” *Regulation & Governance* 6, no. 1 (2012), 78.

¹⁵⁶ Bruce L. Benson and John Baden, “The political economy of governmental corruption: The logic of underground government,” *The Journal of Legal Studies* 14, no. 2 (1985), 401.

Finally, in the absence of safeguards guaranteed by an independent judiciary, the civic sector, including media outlets and civil society organizations, does not manage to properly develop or loses its capacity to check and keep accountable the ruling elites by exercising basic human rights such as freedom of speech, press, and public demonstration.¹⁵⁷ In light of this theoretical framework, the variables highlighted as necessary to explain variation in anti-corruption seem to be of secondary importance, at least to the institutionalist argument.

Out of the numerous *economic explanations*, the state-capture argument stands out as the most compelling one, especially in the light of growing political power of the wealthy in most CEE states¹⁵⁸. For instance, the investment group Penta in Slovakia, well known for its shares in the health care sector in the Visegrad countries has recently acquired part of the country's leading newspaper, *SME*, which is respected for its independence from politics. Moreover, the Czech entrepreneur Andrej Babis, the second wealthiest Czech according to Forbes, bought the publishing house MAFRA in the summer 2013, and later that year entered politics and became the country's finance minister while having imposing shares in over 200 firms in all spheres of the economy. Slovenia, also plagued by high-level corruption scandals, has been accused numerous

¹⁵⁷ Douglas Gibler and Kirk A. Randazzo, "Testing the effects of independent judiciaries on the likelihood of democratic backsliding," *American Journal of Political Science* 55, no. 3 (2011): 696-709.

¹⁵⁸ Dalibor Rohac, *An Awkward Celebration in the Heart of Europe*, Huffington Post, 11/20/2014, http://www.huffingtonpost.co.uk/dalibor-rohac/communism-25-years_b_6184974.html, accessed January 12, 2017.

times for state meddling in the economy¹⁵⁹. State capture in this regard is a phenomenon that affects the region overall lately.

Yet, this interference of economic players into politics represents an outcome of weak institutions that allows excessive concentration of discretionary decision-making powers by few veto players. Most of these countries either do not have in place institutional structures, such as lobbying systems or campaign finance rules that would regulate the interaction between politics and the economy or, they are very weak and ineffective. The political elite, in this context, becomes or continues to be part of corrupt networks especially in situations where party survival depends on the funding of oligarchic groups, bending hence the rule of law for private gains (O'Rourke 2000; Karatnycky 2001; Wedel 2001). Without the existence of effective institutional channels of communication, that would define the boundaries of what is acceptable and what is not, the economic elite bypasses their inefficiency or total lack by directly engaging into politics. Hence, differences in both institutional anti-corruption designs and also law enforcement mechanisms are expected to carry a strong explanatory power, as it will be discussed later. We hence discard this explanatory approach from further empirical analysis.

Amongst the *political determinants* of ACP identified in the literature, party competition and political will stand out the most. Hence, it is expected that states with higher party competition and stronger political will register better ACP. According to the literature, high party competition is found in states with transparent campaign finance

¹⁵⁹ Reuters, *Political novice wins power in Slovenia, hints at revisiting economic reform plan*, 7/13/2014, <http://www.reuters.com/article/2014/07/13/slovenia-election-idUSL6N0PO09H20140713>, accessed December 17, 2016.

regulations, increased government turnover, amplified party fragmentation in parliament, states with an active political opposition, and intra-party control mechanisms. This laundry list of necessary conditions identified in the literature can be put in place either by a strong domestic political pro-reform consensus, or under the pressure stemming from external factors such as the process of European integration. The analysis of political factors would help understand the conditions that incentivize institutional reform, hence understand how institutional weaknesses are reformed rather than explain variation in anti-corruption performance. This endeavor is therefore not undertaken in this study and will be only adjacently addressed in the in-depth case studies.

Of all schools of thought previously analyzed, the *institutional theoretical approach* provides the most convincing account. While all eight new EU member states had to put these mechanisms in place to ensure high party competition as criterion for EU accession, we do see today cases such as Hungary or Romania where this democratic process has not been consolidated. These empirical observations lead us to the analysis of the institutional determinants of ACP in more depth via the employment of case studies in a comparative perspective. By analyzing the existing theoretical framework there is a clear consensus that ineffective institutions breed corruption. What remains unclear is *what* these institutions are in each individual case.

Building on the literature on the institutional approach reviewed above, this study expects to find that states with institutional anti-corruption designs that experience fewer ‘loopholes’ that would allow increased rent seeking, are more likely to register better

anti-corruption performance. *Institutional loopholes* are the vulnerabilities that are embedded in institutional designs that allow for power to be misused when poorly checked. An example of an ‘institutional loophole’ is the submission of conflict of interest (or asset) declarations by public officials without requiring or ensuring by law the existence of an appropriate agency capable to verify the veracity of these statements. In this context, despite the existence of conflict of interest legislation, it can be easily bypassed or abused since its infringement does not trigger any de facto penalties.

In light of the reviewed literature, this study claims that the EU as the main watchdog over reform implementation before accession, without a clear anticorruption framework itself, urged candidate countries to adopt democratic reforms of general-character only without addressing the particular foci of corruption control. Moreover, much anti-corruption legislation has been adopted under the EU guidance, but it does not always correspond to the political contexts of individual country cases. We expect to find overall weak institutions meant to avoid concentration of discretionary power across the region. This misfit between the institutional anti-corruption designs adopted through rapid reforms and the particular domestic political realities lead to the consolidation of institutional weaknesses that create space for rent-seeking.

Whether or not public officials can exploit such ‘loopholes’ or institutional weaknesses depends on the quality and effectiveness of existing internal checks on power. Weak or inappropriately enforced checks erode institutional designs, in this case, and consequently incentivize more frequent abuse of existing institutional ‘loopholes’. The variation in institutional weaknesses hence helps explain why some countries are

more corrupt than others. This study seeks to identify these institutional weaknesses separately for each country.

Despite expectations to find generally weak checks on power across the region meant to avoid concentration of power and corrupt behavior as a result, empirics show that some states are still doing better than others at ACP. What explains this variation among states with generally deficient institutions? Also in light of the institutionalist account, this study expects to find that after accession, domestic monitoring and control mechanisms overtook the watchdog role of the EU from pre-accession and help contain corruption where institutions are still deficient. In this context, this study also argues that strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance when internal checks within the executive and the legislature are poorly functioning. The key check on political power, especially in the context of young democracies, is a strong and independent judiciary that can back up existing anti-corruption institutions by ensuring that institutional ‘loopholes’ are not abused, and the rule of law is respected. An independent judiciary hence is expected to set apart frontrunners from the laggards in ACP.

This study analyzes the institutional arrangements enacted in the judiciary intended to avoid excessive concentration of power, strengthen the independence of this branch from the executive and the legislature, and allow it more effectively to scrutinize acts of corruption as a result. Reforming institutions that help avoid excessive concentration of discretionary decision-making power in the hands of particular actors, as a further step in institutional redesign is critical in ensuring accountable and less corrupt political elites.

Finally, from a temporal perspective, in the context of the new EU member states, there are two rounds of anticorruption institutions put in place: the ones created or reformed in the early 1990s, and the ones set up in the process of European integration. According to the World Bank findings, institutions put in place in early 1990s are more closely correlated to ACP than the ones reformed or put in place during the integration process. This finding hints that domestic-driven institutional designs are more effective at containing corruption than simply external-driven ones because they reflect a greater level of political commitment. By narrowing down these findings to the case of the judiciary, this study also expects to find that states that had more independent judiciaries put in place before they embarked on their European integration journey are better at containing acts of corruption today than their counterparts.

To conclude, this chapter has reviewed the existing literature that helps explain variation in anti-corruption performance. Further, it assessed the plausibility of explanations provided by each of the five theoretical frameworks in light of the questions raised in this study. It dismissed the international, economic, and socio-cultural determinants as *prima facie* implausible explanations due to the fact they do not provide sufficient variation among the states of the CEE region. While the political determinants present strong arguments that cannot be easily dismissed, they are not addressed in this study *per se* since they address a question outside of the scope of this research, and namely understanding under what conditions institutional reform is carried out. Finally, the institutionalist theoretical framework is employed for further hypothesis testing as it provides the most convincing approach to understanding why some CEE states perform better in their anti-corruption scores than others after their accession to the EU.

3

Theoretical Considerations

Using economic and institutional assumptions as building blocks,¹⁶⁰ this study argues that differences in institutional designs that allow or constrain abuse of discretionary decision-making power in tandem with an independent, non-politicized judiciary explain variation in anti-corruption performance after accession. In this context, all states have particularistic institutional vulnerabilities, or ‘loopholes’, that rent-seeking legislative and executive office holders may seek to abuse. Otherwise stated, institutional loopholes represent the vulnerabilities that are embedded in institutional designs that allow for power to be misused when poorly checked. They define the strength of institutional anti-corruption designs. An example of an *institutional loophole* is the submission of conflict of interest (or asset) declarations by public officials without requiring or ensuring by law the existence of an appropriate agency capable of verifying the veracity of these statements. In this context, despite the existence of conflict of interest legislation, it can be easily bypassed or abused since its infringement does not trigger any de facto penalties. Whether or not public officials can exploit such institutional ‘loopholes’ depends on the quality and effectiveness of existing internal checks on power. Weak or inappropriately enforced checks erode institutional designs, in this case, and consequently incentivize more frequent abuse of existing institutional

¹⁶⁰ See Annex C.1 for a detailed review of assumptions that this study is based on.

‘loopholes’. Strong designs of anti-corruption institutions are hence necessary to avoid backsliding in anti-corruption performance.

Moreover, this study argues that strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance *when* internal checks within the executive and the legislature are poorly functioning. Anti-corruption institutions hence work better together with independent judiciaries that back them up when officials abuse power by engaging in corrupt behavior. The key check on political power, especially in the context of young democracies, is a strong and independent judiciary that can uphold existing anti-corruption institutions by ensuring that institutional ‘loopholes’ are not abused, and the rule of law is respected. Hence, anti-corruption institutions are necessary but not sufficient. They perform better in tandem with an independent judiciary. This study finally argues that different states can ensure a strong independent judiciary via different combinations of judicial institutions. One thing that judiciaries have in common in anti-corruption frontrunners, however, is their insulation from excessive executive involvement. This section develops below the details of this theoretical argument.

In the period between 1995 and 2004, we observe an improvement in control of corruption indicators almost in all candidate states.¹⁶¹ This study claims that this positive trend in anti-corruption performance almost across the board on the eve of EU accession was mostly a reflection of the adopted anti-corruption legislation. This reform process was not necessarily accompanied by an improvement in the actual control of corruption.

¹⁶¹ The World Bank control of corruption indicator does not measure control of corruption before 1995 therefore limited data.

In most cases, no backsliding in control of corruption occurred prior to the time of accession because of the existence of a strong external check, and namely the rapid process of EU integration. It discouraged politicians from abusing existent institutional loopholes in the run up to EU accession. In this sense, the EU conditionality mechanism acted as a strong oversight holding governments accountable. The EU played the role of a compelling watchdog that monitored compliance with general EU standards.

Moreover, the process of EU accession also triggered the adoption of salient reforms that were meant to improve the rule of law as a key accession criterion for candidate countries. In the countries where the EU identified corruption as a problem, it encouraged policy-makers to adopt anti-corruption institutions that they otherwise would not pass, making EU accession a turning point for anti-corruption performance in the years after. These reforms, directly or indirectly, established new anti-corruption institutions or improved states' already existing anti-corruption institutional frameworks.

After becoming EU members, external monitoring and oversight faded away. The enthusiasm for reforms has also slowed down. Institutional weaknesses, which were left unaddressed before accession, started being used for particularistic advantages more often, hence decreasing some states' anti-corruption performance. To continue holding public officials accountable, and to register no backsliding in anti-corruption performance after accession, external oversight had to be replaced with effective domestic checks on political power. This study further argues that the states that managed to develop strong and independent judiciaries able to hold elected and appointed officials accountable by backing up their anti-corruption institutions display overall better anti-corruption performance than states with weaker and more politicized judiciaries. The following

subsections develop the theoretical considerations for each of the two parts of the argument.

A. Differences in institutional designs

This first section of the theory argues that strong institutional anti-corruption designs that have been established or reformed before accession to have fewer loopholes that increase rent-seeking opportunities for office holders are necessary for a state not to backslide on its anti-corruption performance after accession. Otherwise stated, states that for various reasons have not reformed or adopted institutions that help more effectively contain concentration of power before accession display increasing levels of corruption after accession.

Providing a thorough explanation for why certain institutional arrangements have been initially selected over others is beyond the scope of this dissertation work. To safely treat these differences as exogenous to the theoretical argument, it needs to be mentioned that the presence or absence of certain anti-corruption institutions at time of accession carries idiosyncratic reasoning. The initial process of establishing anti-corruption institutions has registered various trajectories across states. In most cases in the early 1990s, states have not established genuine anti-corruption institutions, if at all, because fighting corruption did not represent a priority on the political agenda. When political elites had to handle the transformation (or creation from scratch, as in the Baltic states) of state institutions after the end of the communist era, the adoption of anti-corruption institutions for some governments was simply not among the top reforms that were

perceived as necessary. In other cases corruption as such was not perceived a problem to be addressed. Therefore, most public administration agencies in the first years of transition had no inbuilt anti-corruption institutions at all.

This was, for instance, the case of Poland where public administration was marred with conflicts of interest in the early 1990s but no anti-corruption institutions that would help preventing them were in place.¹⁶² Only with the EU accession process and the extensive broadcast of a series of high-level corruption scandals in the early 2000s, Poland started addressing the missing anti-corruption legislation. Estonia, another current frontrunner in anti-corruption performance, also began addressing more seriously the lack of anti-corruption mechanisms only in the second half of the 1990s. Only when corruption started to be perceived as a problem for the development of the state and society, authorities adopted salient anti-corruption mechanisms.¹⁶³

Other states adopted anti-corruption related institutional reforms that bore the lowest costs for reform, portrayed less conflicting interests, or could be easier adopted by the legislature. The backsliders had poorer internal checks set up because of various reasons as well: either they did not represent a policy priority for the ruling parties, they were not specifically asked to be adopted during the EU pre-accession period, or no political consensus could be built around them. Weak or unreformed internal checks allowed power to be misused for private gain after accession, hence weakening their anti-corruption performance. Moreover, it needs to be highlighted, in this context, that after twenty-five years of independence, elites setting up initial institutions in the 1990s differ from the current executive and legislative elites that exploit institutional loopholes after

¹⁶² Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁶³ Anonymous (expert), interviewed by author, Tallinn, October 2016.

accession. Hence we treat these differences as exogenous to the argument made in this research work.

To carry on with the argument, the lack of checks on power in the early 1990s paved the way to the development of numerous conflicts of interest. In this sense, most states undertook a reactive rather than a preventive approach to anti-corruption institution building once corruption scandals were revealed. The institutional checks within the executive and legislative powers that were eventually adopted represented mostly a reaction to instances of political corruption that were brought to light. These newly set up checks represented patchy reforms that left many institutions vulnerable to continued potential misuse of power.

Before accession, the legal loopholes embedded in existing institutional arrangements were not used as often though, since the rapid process of EU accession and reputation risks did not allow it. In this sense, the EU played the role of a compelling watchdog that monitored compliance with general EU norms and standards of behavior in public office. The EU accession process also triggered numerous reforms that addressed the anti-corruption framework in candidate countries. The study further argues that most anti-corruption institutional arrangements that were adopted or reformed in the period preceding EU accession were linked to the more general recommendations of the EU in the process of harmonization of domestic laws to the *acquis communautaire*. In the absence of a clear anti-corruption strategy of its own, however, proposed recommendations were not tailored to the idiosyncratic political realities in these states.

In this sense, the EU without a clear institutional anticorruption framework itself¹⁶⁴, urged candidate countries to adopt democratic reforms only of general-character without addressing the foci of corruption particular to each country with contextualized reforms. This misfit between the institutional designs adopted through rapid reforms and the particular domestic political realities has led to further consolidation of already existing institutional weaknesses that create more opportunities for rent-seeking behavior. This study expects to find hence on the eve of EU accession different institutional anti-corruption designs across the new member states with embedded idiosyncratic weaknesses that expose elected and appointed public officials to rent-seeking opportunities when left unchecked.

After acquiring EU membership, external monitoring and oversight faded away. States were left with domestic anti-corruption mechanisms of their own that they managed to previously develop. To continue containing corrupt practices in public office, external oversight had to be replaced with strong domestic checks. In the absence of those or their poor performance, institutional weaknesses in these states began to be used more often for particularistic advantages decreasing hence their overall anti-corruption performance. Public officials started exploiting the unaddressed or purposefully unreformed vulnerabilities related to their specific institutional designs when circumstances allowed. This study expects to find overall more states with weak institutional anti-corruption designs than ones with effective institutions able to hold officials accountable as much of the anti-corruption agenda has been driven by the EU pre-accession reform process rather than domestically driven.

¹⁶⁴ Open Society Institute, *Monitoring the EU Accession Process*.

This study argues hence that differences in institutional anti-corruption arrangements explain why some CEE countries are less effective at controlling corruption after accession than others. We expect to find that states that display overall fewer institutional loopholes (by having adopted appropriate reforms in the 1990s, before or immediately after EU accession), meaning more effective checks that help holding elected and appointed public officials accountable, register improving or stable anti-corruption performance. At the same time, states that experience more institutional weaknesses due to deficient institutional designs backslide on previous anti-corruption achievements after accession.

(H₁) States that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession.

In the context of institutional anti-corruption designs that help limit abuse of discretionary decision-making power, most salient institutions that are reviewed for each case are the following: bribery legislation, whistleblowers protection, conflict of interest (COI) and asset declaration, anti-corruption strategies, auditing frameworks, internal control mechanisms, and anti-corruption agencies (see Figure C.3.1). Anti-corruption measures within civil service, state-controlled agencies and off-budget funds, the legislature, political parties, and law enforcement agencies are also examined as salient checks within the executive and the legislature. Different strengths of designs of these institutions explain why some countries rolled back their previous anti-corruption achievements after accession. This study expects, in this regard, to find that states in the

frontrunners group (Estonia, Poland) display fewer loopholes in the institutional arrangements mentioned above than states in the middle group (Latvia, Lithuania, and Slovenia) or the backsliders' group (Czech Republic, Hungary, Slovakia).

This study also expects to find that among the anti-corruption institutions, the internal control mechanisms¹⁶⁵ within the executive and the legislature explain most of the difference between the frontrunners and backsliders in anti-corruption performance amongst the institutions aforementioned. The frontrunners and the middle group to some extent had set up stronger internal control mechanisms than the backsliders. After joining the EU, these checks helped frontrunners keep officials accountable and reduce rent-seeking behavior more effectively. The backsliders' group had poorer internal control mechanisms set up because of various reasons: either they did not represent a policy priority for the ruling parties, they were not specifically asked to be adopted during the EU pre-accession period, or no political consensus could be built around their creation. These weak or unreformed internal checks allowed power after accession to be misused for private gain, hence weakening states' anti-corruption performance.

This study highlights the importance of existence of strong institutional anti-corruption designs namely *before accession* as a determinant of anti-corruption performance after joining the Union because of two main reasons: (a) with the strong EU conditionality fading away after accession, reforming legislation that would create or improve checks on power generally becomes much more difficult, especially in such sensitive areas as anti-corruption measures. It does not mean it is impossible, but the process becomes much more unlikely in the absence of a strong incentive such as EU

¹⁶⁵ Examples of internal control mechanisms include disciplinary boards or committees within state institutions that have the capacity to trigger disciplinary proceedings and subsequent penalties in cases of abuse of office and authority to deter future rent seeking.

accession. Moreover, (b) the EU pre-accession process has the effect of gradually ‘locking-in’ institutional change. Institutions adopted before EU accession cannot be easily dismantled later on if the costs are too high.¹⁶⁶ In the case of anti-corruption institutions, that are generally perceived by society as beneficial in containing corrupt behavior of politicians, their dismantle is very costly. In this case institutions become locked in. According to Sedelmeier, “lock-in of pre-accession institutional changes can contribute to their persistence even after the EU’s sanctioning power weakens.”¹⁶⁷ At the same time, Sedelmeier argues that the lack of institutional change during pre-accession can also be locked in. EU pressure after accession is insufficient to “rectify fully the lack of pre-accession change.”¹⁶⁸ In this context, the set up of anti-corruption institutions before accession represents a critical juncture for the future anti-corruption performance of the new EU member states.

B. Domestic Control and Oversight Mechanisms: The Judiciary

As argued above, the existence of anti-corruption institutions designed with few loopholes that would allow rent-seeking opportunities for public office holders is a necessary condition for an improved or stable anti-corruption performance after accession. It is not a sufficient condition, however. Anti-corruption institutions, this study argues, need to be backed up by a strong and independent judiciary, as an external check on power. This is especially important *when* internal anti-corruption checks within the

¹⁶⁶ Ulrich Sedelmeier, "Is Europeanisation through conditionality sustainable? Lock-in of institutional change after EU accession," *West European Politics* 35, no. 1 (2012): 20-38.

¹⁶⁷ Sedelmeier, "Lock-in of institutional change after EU accession," 20.

¹⁶⁸ Sedelmeier, "Lock-in of institutional change after EU accession," 20.

executive and the legislature do not function well.

Since this study expects to find poorly functioning institutional checks (internal control mechanisms, in particular) that would hold elected and appointed officials accountable more so in the backsliding states, this theoretical section argues that there is need for external checks (domestic control and oversight mechanisms) to cover this lacuna. These are particularly important in the context of the CEE region due to historically highly centralized executive power in the region and the consequent need for institutional de-monopolization of power after the end of the communist era. A strong and independent judiciary, this study hypothesizes, is key for limiting the abuse of existing institutional loopholes for personal gain by ensuring the enforcement of existing anti-corruption mechanisms. A strong and independent judiciary that works *in tandem* with anti-corruption institutions hence differentiates the states with better anti-corruption performance from those who backslide on previous achievements.¹⁶⁹

Existing scholarly literature shows that the judiciary, as a domestic control and oversight mechanism, plays a unique role in any society as a check on the behavior and activities of the other two branches of power.¹⁷⁰ It is also a “key element in the assessment of anti-corruption policies”, and a precondition for an effective supervision of complex corruption cases, especially the ones where high-level politicians are under the scrutiny of the law.¹⁷¹ Empirical analysis, in this regard, also portrays a close positive association between the rule of law and control of corruption indicators of a particular country (see Figure C.2). Similarly, the trajectories of these two indicators are highly

¹⁶⁹ It is beyond the scope of this study to elucidate why and how independent judiciaries have been established in the first place.

¹⁷⁰ Della Porta and Vannucci, *Corrupt exchanges*; Susan Rose-Ackerman, ed., *International handbook on the economics of corruption* (Edward Elgar Publishing, 2007); Voeten, "Judicial Appointments."

¹⁷¹ European Commission, Annex 17 "Hungary to the EU Anti-Corruption Report," 2014, 4.

correlated for all the eight new EU member states under review in this study. Yet, previous studies that do attest this correlation, do not explain the underlying mechanisms at work.¹⁷² It is not clear hence what aspects of the judiciary enhance judicial independence, and as a result, explain variation in anti-corruption performance. This study builds on this positive association between rule of law and control of corruption, and further hypothesizes what judicial arrangements enhance the most the independence of the judicial branch.¹⁷³

This study further argues that an independent judiciary is a crucial domestic monitoring and oversight mechanism, especially in the context of young democracies. Judicial independence ensures that judges adjudicate cases purely based on the law and the facts before them¹⁷⁴, an especially important process in the regional CEE context where judicial branch decisions were too often the reflection of executive orders during the communist era. In this context, strong safeguards for judicial independence empower judges to enforce the rule of law even in cases involving high-profile politicians, where their decisions “may be unpopular but necessary.”¹⁷⁵ In this sense, this research builds on scholars’ findings, which claim that,

“the judiciary ensures that political leaders do not act in complete disregard for statutory and constitutional law. Judiciaries that lack political independence have strong incentives to protect the interests in power and exercise whatever authority they have only at the margins. This

¹⁷² i.e. Mungiu-Pippidi, *Controlling Corruption*.

¹⁷³ This study uses the indicator for the rule of law provided by the World Governance Indicators to measure the independence and strength of the judicial branch. The definition provided by the World Bank for this indicator states that “Rule of Law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” This particular indicator has been chosen because it provides the lengthiest period of measurements (1995-present), and because it also covers control of corruption as an indicator for the same period. This allows for a longitudinal analysis of the association of the two dimensions of governance. This study however does not equate rule of law with judicial independence, which is separately analyzed within in-depth case studies.

¹⁷⁴ O’Connor, *Vindicating the Rule of Law*.

¹⁷⁵ O’Connor, *Vindicating the Rule of Law*.

consolidation of power in the hands of the executive can lead to the erosion of democratic principles and should be checked by an independent judiciary that guarantees the protection of individual rights.”¹⁷⁶

With the fall of communism in 1989, not all states rushed to adequately decentralize executive power, and introduce the necessary checks and balances that would ensure a clear separation of powers. The judiciary, however, to be able to uphold the rule of law, had to be “relatively free from outside interference” as a whole.¹⁷⁷ Fragmenting political influence over the judicial branch, in this context, was particularly crucial because of the historically strong executive that had the judiciary under its jurisdiction during the communist era in the CEE region.

Unlike the political and economic spheres, which constituted more salient priorities for states’ initial transformations, the judiciary had mostly not been subject to early reforms. Having to rebuild their statehood or even build political and economic institutions anew, most states paid little attention and resources for salient judicial reforms in the early 1990s. Moreover, the judiciary has been the *least* reformed during the European integration process also as the EU has placed little attention on reforming this sector,¹⁷⁸ a fact that is underlined by way the EU changed approach when it came to Romania and Bulgaria, and even more so, Croatia, after recognizing the negative consequences of neglecting judicial reform during accession negotiations.

This study hence adds another temporal dimension to the argument and hypothesizes that the states that reformed their judiciaries *before* accession register better anti-corruption performance after accession. Moreover, it is also expected that states that reformed their judiciaries in the early 1990s, driven by domestic political will rather than

¹⁷⁶ Gibler and Randazzo, "Testing the effects of independent."

¹⁷⁷ O'Connor, *Vindicating the Rule of Law*, 3.

¹⁷⁸ Open Society Institute, *Monitoring the EU Accession Process*.

the EU accession process alone, register better anti-corruption performance after accession. This expectation is based on the assumption that domestic-driven reforms are better tailored to the context-specific necessities of the country than the reforms driven solely by the EU accession process. Unlike states whose anti-corruption performance lapses after accession, the frontrunners established a strong and independent check on the powers of the other two branches of government. Moreover, this external check enhances the effectiveness of anti-corruption institutions by backing them up when political actors test their loopholes, and consequently reduces rent-seeking behavior of political actors.

(H₂) States that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession.

Furthermore, the study argues that the degree of politicization of judicial institutions explains the capacity of a state's judiciary to handle cases of corruption. This study also hypothesizes, in this sense, what the vulnerabilities of judicial institutional arrangements are that allow for a higher degree of politicization of the judiciary, and consequently threaten the independence of the judiciary. Based on the criteria highlighted in the scholarly literature as well as in assessment reports of international organizations, this study assesses the degree of politicization of judicial institutions by reviewing the existing institutional connections and entry points for excessive executive influence over the judiciary. It reviews longitudinally and also across cases the institutional arrangements that allow a judiciary to carry out independently and efficiently its

“watchdog” role over government behavior. Overall, this study expects to find a higher degree of politicization of the judiciary for countries backsliding on their anti-corruption performance, and a lower degree or no politicization of the judiciary for the frontrunners’ group. The institutions examined are as follows:

(a) *The legal framework and organization* of the judiciary are reviewed since they clarify the constitutional separation of powers, and the organization of the court system. They also stipulate the structural safeguards that underpin the institutional independence of the judicial branch. The separation of judicial powers from those of the executive and legislature proves critical in maintaining the rule of law, reducing the threat of potential “governmental arbitrariness,”¹⁷⁹ and therefore this study expects to find more advanced legal frameworks in states with stable or improving anti-corruption performance.

Moreover, this study expects to find that states with stable or improving anti-corruption performance have adopted reforms that ensure this basic but critical balance of powers in the early 1990s (or with the adoption of a new constitution). This is the case because the separation of powers represents the constitutional basis that was necessary to be put in place once the communist era was over. At the same time, knowing that the EU has insisted on the reform of the rule of law in all candidate states, this study expects to also find that more new member states have in place overall advanced legal judicial frameworks compared to western EU member states, if the EU required them to reform the judiciary as a condition for EU accession. In contrast, this study expects to find that in the states where the judiciary’s independence is not sufficiently protected from politicization, most legal and programmatic mechanisms put forward by the government

to reduce corruption are significantly undermined.¹⁸⁰

Summing up, the study expects to find that states with advanced legal frameworks that clearly separate between the three branches of government display more independent judiciaries, and consequently, improved or stable anti-corruption performance after accession. States where the independence of the judiciary is not clearly stipulated in the Constitution, and where courts have experienced less re-organization in the 1990s are expected to register declining anti-corruption performance after accession.

(b) *Court administration* is another aspect that clarifies the degree of institutional independence of the judiciary. To shield justices from potential political influence on behalf of the executive, the judicial branch has to have jurisdiction or at least oversight authority over its administration.¹⁸¹ This study expects to find hence that states with co-shared administration of the lower courts have more independent judiciaries. The degree of judicial independence is also reflected in the procedure of appointment and dismissal of court (vice) presidents, and their assigned competences. According to CCJE,

“Court presidents can be important spokespersons for the judiciary in relation to the other powers of state and the public at large. They can act as managers of independent courts instead of managers under the influence of the executive. However, [...] the CCJE notes the potential threat to judicial independence that might arise from an internal judicial hierarchy.”^{182,183}

The role of court (vice) presidents is reviewed in each of the cases, hence, to determine how politicized this function is. Judicial independence via court administration is also expressed in whether there are self-regulatory judicial bodies that have administrative competencies, their roles in court administration, and their say in

¹⁸⁰ Spector, *Fighting corruption in developing countries*.

¹⁸¹ O'Connor, *Vindicating the Rule of Law*.

¹⁸² See the CCJE Opinion No. 1(2001), par 66.

¹⁸³ CCJE, “Challenges for judicial independence and impartiality in the member states of the Council of Europe” (Report, March 2016).

administrative issues. The study expects hence to find that states that have the lower court system under the full administration of the executive experience more avenues for undue influence than when court administration is at least co-shared with the judicial branch due to less concentration of powers in the Ministry of Justice.

(c) *Judges' conditions of office* (appointment, promotion, transfer, and dismissal, salary and working conditions) are indicators of judges' decisional independence, and are reviewed for each case. They indicate how much influence various external actors can exert on judges. According to the literature but also practical experience, justices have to be kept beyond the reach of influence of external actors. According to Alexander Hamilton, in the Federalist Papers, "next to permanency in office, nothing can contribute more to the independence of judges than a fixed provision for their support."¹⁸⁴ In accordance with the literature, this study argues that judges need to be appointed competitively and according to their qualifications to ensure judicial independence:

"Security in pay and position frees judges to exercise their best legal judgment in applying the law fairly and impartially to the parties before them. As one federal district court judge [...] puts it, "[a] judge who is concerned that his or her rulings might affect his or her career is a judge who might lose focus on the most important of judicial duties: to maintain the rule of law."¹⁸⁵ Judicial independence from the other branches of government through safeguards on position and salary is essential to a system in which judges make their decisions based on the law, rather than out of fear of reprisal. In short, an independent judiciary is the foundation that underlies and supports the Rule of Law."¹⁸⁵

Moreover, terms of employment explain variation in institutional quality as well.¹⁸⁶ In this sense, fewer overlaps of interests between politicians and civil servants allow for fewer opportunities for collusion, more checks and balances between the two, and more incentives for mutual accountability. This separation of interests leads to the

¹⁸⁴ Alexander Hamilton, The Federalist No. 79, cited in O'Connor, *Vindicating the Rule of Law*.

¹⁸⁵ O'Connor, *Vindicating the Rule of Law*, 3.

¹⁸⁶ i.e. Dahlstrom, Lapuente and Teorell, "The merit of meritocratization."

development of a more professional civil service. Similar to the professionalization of the civil service, open and competitive recruitment of judges is also highly correlated with judicial quality.¹⁸⁷

Employment conditions for judges (salary and job tenure length), this study hypothesizes, have an impact on the quality and impartiality of the judiciary also, since relatively higher wages deter public servants from engaging in corrupt practices.¹⁸⁸ In this context, the frontrunners in anti-corruption performance are expected to provide working conditions and salaries to judges that are at least comparable to Western standards, and hence help consolidate judges' decisional independence. In this context, this study expects to find that states where political control over processes of appointment, promotion, transfer, and dismissal of judges is fragmented across several actors display improved or stable anti-corruption performance after accession. By reviewing judges' conditions of employment for each case this study tests the underpinnings of decisional independence of judges and its corresponding impact on levels of corruption.

(d) The existence (and composition) of a national *judicial council* as the main representative of the judicial branch is known to enhance institutional judicial independence and the status of the judiciary as an equal branch of government. Various international organizations, including the Council of Europe, have been recommending the institutionalization of judicial councils to the new democracies in the CEE region as a means to decentralize power over the judiciary away from the executive. More important than the existence of such a council is its composition: at least fifty percent have to be judges to ensure their autonomy and counterbalance external influence. As the main

¹⁸⁷ Charron, "Weberian Civil Service."

¹⁸⁸ Becker, Gary S., and George J. Stigler. "Law enforcement, malfeasance, and compensation of enforcers." *The Journal of Legal Studies* 3, no. 1 (1974): 1-18.

representatives of the judicial branch, judicial councils need to be endowed with the necessary competences to fully represent the branch, including competences in processes of recruiting and appointing of judges, conducting disciplinary proceedings, court administration-related competences, and budgeting. According to CCJE, “independence of judges and prosecutors can be infringed by weakening the competences of the Council for the Judiciary, by reducing the financial or other means at the disposal of the council or by changing its composition.”¹⁸⁹

This section hence reviews whether there is a separate independent institution that represents the judiciary. It examines the composition and main competences of the existing council, and to what extent these enhance the overall independence of the judicial branch. The study expects to find that countries that have set up judicial councils with a balanced composition and significant decision-making competencies that limit potential undue executive influence on the Council’s activity are registering stable or declining levels of corruption due to an enhanced independence of the judicial branch.

(e) *Financial autonomy* is another aspect of the judiciary that is reviewed. It explains the degree of institutional and decisional independence of the judiciary when it comes to potentially excessive external interference in the financial management of the lower courts. To be able to balance the other two powers equitably, the judiciary hence needs to manage or at least have oversight authority of its budget. Additionally, the budget for the courts needs to correspond to a level that allows for effective and efficient administration of justice. In line with the OSI Report on Judicial Independence, this study agrees that,

¹⁸⁹ CCJE, “Challenges for judicial independence.”

“the judiciary’s freedom to operate independently can be seriously undermined if it is unduly beholden to other branches for its material well-being. Parliament can alter the overall funding of the courts; the executive can distribute funds unevenly among courts. Although it is normal – and entirely consistent with European practice – for the judiciary to receive funding solely through parliamentary appropriations and executive disbursements, these processes can be used to punish or reward courts for the behaviour of particular judges. The mere knowledge that this can happen may operate to discourage judges from ruling against the other branches’ wishes.”¹⁹⁰

This section reviews how the court system is financed and resources allocated, according to what criteria, and what institutions have the final decision on the budgeting process and allocation of funds. This criterion hence explains the strength of the financial leverage of the executive over the judiciary. Finally, this study expects to find that judiciaries that have a stronger say on their finances are more independent from an institutional perspective, and therefore able to avoid excessive interference on behalf of external actors more easily. Greater financial autonomy increases the likelihood of judicial independence, especially in salient cases of political corruption that involves members of the other two branches of government.

(f) Despite not always directly related to the judicial system, *public prosecutors* oftentimes play a complementary role to, or an integral part of, the judiciary. This study argues that this role is especially important when it comes to sanctioning political corruption. Judges and prosecutors are part of the same criminal justice legal system, and are also frequently members of the same professional corps. Public prosecution, in this sense, can also be organized as part of the judicial branch, and therefore it is analyzed in this study as an integral part of the judiciary. The prosecution system can be modeled also as part of the executive, an institutional arrangement that can influence its independence especially when cases of corruption involve members of the executive. Dependent prosecutors, in this context, can delay or even obstruct the investigation and prosecution

¹⁹⁰ Open Society Institute, *Judicial Independence*, 45.

of a case. Powerful government ministries, in this context, can exert substantial pressure on the public prosecutor to stop prosecution¹⁹¹, therefore institutional leverage should be minimal to avoid such situations.

Moreover, prosecutor's independence is key to the start and quality of investigations, which can decide whether or not a case gets to the desk of judges. Mungiu-Pippidi also finds that the "EU countries which have succeeded in building very effective control of corruption in Europe have done so by means of different institutional arrangements for their systems of prosecution and their judiciary arrangements."¹⁹² This section therefore reviews the organizational safeguards of prosecution, terms of appointment, promotion, and dismissal of prosecutors as indicators of their independence, and enhancer of judicial independence as such. This study expects to find that an effective and independent prosecution system enhances the independence of judiciaries, and consequently helps states register improving or stable anti-corruption performance.

(g) *Specialization* within the judiciary (and prosecution) is a further aspect that is analyzed as it is brought up in the literature to potentially enhance judicial independence. Both U.N. and Council of Europe standards highlight, in this regard, the necessity for specialization of prosecution, in particular. CM Recommendation 19 (2000) states that,

"In order to respond better to developing forms of criminality, in particular organized crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed."¹⁹³

In line with the CM recommendation, states with specialized public prosecution

¹⁹¹ O'Connor, *Vindicating the Rule of Law*.

¹⁹² Mungiu-Pippidi, *Controlling Corruption in Europe*, 40.

¹⁹³ Council of Europe, *Recommendation Rec (2000) 19*.

offices should be better equipped to investigate complex cases of corruption. There are however concerns, highlighted in the literature, when it comes to the role of specialized anti-corruption institutions, such as courts. Among the most salient ones are the creation of an additional layer of ineffective bureaucracy, diversion of attention, resources, and responsibilities from existing control institutions, invocation of jurisdictional conflicts and turf battles with other institutions, and creation of possibility for its abuse as a tool against political opposition leaders.¹⁹⁴ Moreover, depending on the positioning of the specialized court in the structure of the court system, if the Supreme Court as the highest appellate court is highly politicized, and can struck down judgments delivered by the specialized court, then its effectiveness is under question when it comes to making an impact on anti-corruption performance. In this sense, specialization units within the judiciary and prosecution are another salient aspect that clarifies the institutional independence of a judicial system. This study argues, they make the investigation and prosecution process more efficient especially in complex and sophisticated cases of political corruption and organized crime, but if positioned under a higher court authority that does not exercise judicial independence, its effectiveness is undermined. This study hence clarifies whether specialized units can explain variation in anti-corruption performance as a defining aspect of institutional judicial independence. The study also expects to find overall more specialized units in states with improving or stable anti-corruption performance. For a summary of mechanisms see Figure C.3.2.

This study also argues that the *type of reforms* in the judiciary as well as their *timing* also explain why some states have more independent judiciaries than others. In

¹⁹⁴ International Association of Prosecutors, <http://www.iap-association.org/NACP/Anti-Corruption-Models>, accessed May 12, 2016.

accordance with a World Bank study (2006), this work expects that reforms undertaken in the early 1990s in the judiciary to have been more effective than the ones adopted at a later stage. Timing of reforms, in this sense, explains whether reforms were mostly domestically driven, or adopted as a requirement of the EU accession process. This distinction is important because domestically-driven reforms, unlike EU-driven ones, address critical issues in the judiciary more genuinely, as well as reform areas that otherwise could be exploited for rent-seeking purposes by political forces or from within the judiciary. Institutional vulnerabilities left unaddressed could threaten the independence of the judiciary across time. EU accession driven reforms in the judiciary, on the other hand, are expected to be less tailored to the domestic needs and problems therefore leaving critical areas either unaddressed or inadequately reformed despite meeting the necessary standards for EU accession. This section hence reviews the timing of the main reforms in the judiciary, as well as their type by looking at what areas these reforms addressed and how critical they are for ensuring judicial independence.

By reviewing the degree of independence of judiciaries through the lens of the aforementioned criteria, this study argues that states that set up independent and effective domestic oversight and control mechanisms are more effective at containing excessive concentration of power, preserving the rule of law, and subsequently improving anti-corruption performance after accession. Namely, the study argues that the stronger the institutional arrangements states have in place, and the stronger their judicial independence, the better their anti-corruption performance after accession is. Finally, while judicial independence is key in explaining variation in anti-corruption performance, different combinations of institutional arrangements can achieve this independence in

different countries. One thing that judiciaries in anti-corruption frontrunners have in common is their insulation from excessive executive involvement.

Finally, this study distinguishes between institutional arrangements that shape the *decisional* independence of the judiciary and arrangements that enhance *institutional* independence. During the EU accession process, the focus was mostly put on the need to reform the institutional judicial framework. Enhancing decisional independence of judges, however, is a more difficult process that requires more time due to the historically heavy influence on judges on behalf of the executive in the region during the communist era.

The theoretical argument put forward in this study starts hence from the literature finding that the judiciary is among the main institutions that are highly associated with improved legal accountability, better control of corruption, and more generally with stronger democratic systems.¹⁹⁵ The study hence contributes to the existing literature by empirically testing the identified association on the basis of three in-depth case studies generalizable to the 2004 enlargement wave, and by analyzing what aspects of judicial independence help better explain variation in anti-corruption performance.

This study also contributes to the debate on the role of the judiciaries in new democracies. The literature on judicial independence and democratic development is not clear about the precise role courts play within democratic and newly democratic regimes.¹⁹⁶ Some scholars maintain that courts are reflective of majoritarian interests.¹⁹⁷

¹⁹⁵ O'Donnell, "Horizontal Accountability in New Democracies"; Karklins, *System*; Spector, *Fighting corruption in developing countries*; Moustafa and Ginsburg, *Rule By Law*.

¹⁹⁶ Gibler and Randazzo, "Testing the effects of independent judiciaries."

Others argue that courts provide a mild, consultative check on executive and legislative power.¹⁹⁸ If there is consensus in this strand of literature than it regards the role of timing and legitimacy of courts: “new judiciaries are unlikely to be powerful and represent a check on other interests within society.”¹⁹⁹ In this regard, the study expects to find as already mentioned a time lag between adopted judicial reforms and an actual improvement in anti-corruption performance.

Conclusion

To summarize the overall argument put forward in this study, strong institutional anti-corruption designs are necessary for states not to backslide on their anti-corruption performance after accession. The study defines *strong institutional designs* as institutional arrangements – established or reformed before accession – that minimize rent-seeking opportunities for public office holders. It is not a sufficient condition, however. Anti-corruption institutions work better in tandem with strong domestic monitoring and oversight mechanisms. They need to be backed up by an independent judiciary, as an external check on power especially when internal checks within the executive and the legislature do not function well. Since this study expects to find weak institutional checks within the executive and legislative powers on the eve of EU accession especially in the laggard states, there is need for external checks (domestic control and oversight mechanisms) to hold public officials accountable once EU's

¹⁹⁷ Robert A. Dahl, "Decision-making in a democracy: The Supreme Court as a national policy-maker." *J. Pub. L.* 6 (1957): 279.

¹⁹⁸ Alec Stone Sweet, *Governing with judges: constitutional politics in Europe* (Oxford University Press, 2000).

¹⁹⁹ Gibler and Randazzo, "Testing the effects of independent judiciaries," 697.

oversight has come to an end. States achieve a strong and independent judiciary, in this regard, via different combinations of institutional arrangements. One thing that judiciaries have in common in anti-corruption frontrunners, however, is their insulation from excessive executive involvement.

4

Methodological Considerations

This dissertation undertakes a multi-method approach to explaining variation in anti-corruption performance in the new member states after their EU accession. Assessing control of corruption has traditionally been a difficult endeavor, especially in the context of analyzing political corruption. The choice of measures and operationalization is a highly sensitive process as it can generate different outcomes depending on the selected indicators. This study therefore uses triangulation to ensure more rigorous findings. By choosing the World Bank's governance indicators to measure control of corruption, the study follows the more recent works on corruption that pursue the longitudinal dimension of the phenomenon. Yet the fact that this study seeks to explore corruption in a small-N context, any rigorous statistical analysis would suffer from intrinsic model misspecification errors. By delving into the idiosyncrasies of institutional designs shaping the anti-corruption framework of a country, the study sheds light on the substance of corruption in the CEE region and seeks to compensate for the weaknesses of a pure quantitative analytical approach.

To test the proposed hypotheses, this study makes use of available assessment reports provided by various international institutions and also draws on empirical primary data collection in three states – Estonia, Poland, and Slovakia. Conducting interviews even under conditions of anonymity has been a challenging endeavor in itself considering the nature of the topic. It has been almost impossible, in this context, to organize interviews with prosecutors in Poland and Slovakia, a lacuna in the fieldwork conducted.

The study combines longitudinal and cross-sectional analysis, as well as within-case and cross-case comparative methods of analysis. This blend of qualitative methods allows for a more rigorous and comprehensive investigation of the phenomenon of political corruption.

This section hence lays out the methodological approach undertaken in this study. It defines the dependent and independent variables, their operationalization, the methods and logic employed for hypotheses testing, case selection, data collection and fieldwork conducted, as well as the reasoning behind the choice of a multi-method approach to topic analysis.

The Dependent Variable – anti-corruption performance (ACP)

Traditionally, corruption has been a highly complex and difficult to measure phenomenon due to its hidden nature. In the last two decades, it moved beyond common practices of bribe giving or receiving and became a much more sophisticated process that is difficult to capture with traditionally available measurement tools.²⁰⁰ In the framework of this study, I define *corruption* as “the misuse of public office for personal gain.”²⁰¹ The study limits the analysis of this phenomenon to political corruption more specifically, which is defined as “behavior that takes place within public institutions.”²⁰² I look particularly at explaining changes in levels of corruption both in the *legislature* and

²⁰⁰ Interview notes with experts at Transparency International in Slovakia, Poland, and Estonia, September-October 2016.

²⁰¹ Robert E. Klitgaard, Ronald MacLean Abaroa and H. Lindsey Parris, *Corrupt cities: a practical guide to cure and prevention* (World Bank Publications, 2000).

²⁰² Karklins, *System*, 106.

the *executive*, without differentiating between legislative (practiced by elected officials) and bureaucratic (practiced by appointed officials) corruption.²⁰³

In this context, the study seeks to explain why some new EU member states from the CEE region register better anti-corruption performance than others after joining the Union in 2004. The study details in this regard the variation in the CEE regional *anti-corruption performance*, defined as the changing level of corruption in a country, year by year between 2004-2014. For a quantitative understanding of the state of corruption, we use the World Governance Indicator of control of corruption as well as public opinion polls data (Eurobarometer data and the Corruption Perception Index developed by Transparency International). The WGI estimate for control of corruption is chosen over other existing estimates because it captures “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.”²⁰⁴ Using a perception measure about corruption is not always reflective of the actual corrupt behavior and practices. Yet it represents the most accurate and frequent measurement used by the scholarly community studying the phenomenon. This study follows on this commonly used though not without pitfalls practice.

To understand the substantive variation in the dependent variable, in this regard, the study analyzes the changing nature and state of corruption in each of the eight cases during 1991-2014. The qualitative assessment of corruption is divided in two periods, 1991-2004 and 2005-2014. Where data are available, the 1991-2004 period is also

²⁰³ Della Porta (1999) makes a difference between the two types in her study.

²⁰⁴ Definition provided by the World Bank, World Governance Indicators. The annual country's score ranges from approximately -2.5 to 2.5, where -2.5 indicates no control of corruption and 2.5 indicates outstanding control of corruption.

divided into two: the early 1990s, and the EU pre-accession period which usually starts in 1997/98. In this regard it identifies the main foci of corruption for each case, and assesses how they have changed before and after accession. A *focus of corruption* is defined as a sphere that has been predominantly affected by corrupt practices, according to international and domestic assessment reports. This study expects to find fewer foci of corruption among the frontrunners than the middle group or the backsliders after accession. Also, it expects to find that the frontrunners have fewer foci of corruption after accession by means of reform implementation before accession. The study complements findings of assessment reports with opinion polls data to determine whether a certain policy sphere does not represent a focus of corruption any longer.

Johnston talks about “contrasting syndromes of corruption” meaning that it is not the same phenomenon everywhere where it occurs. “It [corruption] reflects contrasting origins, opportunities, and costs, and affects societies in quite different ways, depending upon a number of deep-rooted influences as well as more recent trends.”²⁰⁵ Therefore we assess the nature and degree of corruption in each country (defined here as the foci of corruption) before we proceed with explaining the underlying variation. Finally, the study also identifies regional patterns of corruption and provides a classification of the frontrunners and the laggards in anti-corruption performance. This study finds similar patterns and foci of corruption within the three groups: the frontrunners, the middle group, and the backsliders.

²⁰⁵ Michael Johnston, *Corruption, contention and reform: the power of deep democratization* (Cambridge University Press, 2014), 16.

Independent Variables

A. Institutional design

This study assesses the role of institutional design as an explanatory variable for the different levels of anti-corruption performance among states. I argue in this regard that institutions that shape the anti-corruption mechanisms of a state differentiate the laggards from the frontrunners in anti-corruption performance. There is a need to be specific about the institutions this study refers to. Institutions are defined here more generally as the “rules of the game in a society or, more formally, are the humanly devised constraints that shape human interactions,” which reduce uncertainty and transaction costs.²⁰⁶ More specifically, institutions are treated as the “widely accepted rules of conduct that structure a decision-making or political process.”²⁰⁷ In this context, this study analyzes the institutions that form the legal anti-corruption framework of a state, which limit the abuse of discretionary decision-making power of officials, and hence contain corrupt behavior. These are the institutions that limit excessive concentration of power in the hands of a single or a small group of public officials. To define *concentration of discretionary decision-making power* we borrow Mungiu-Pippidi’s explanation:

“discretionary power opportunities due not only to monopoly but also to privileged access under power arrangements other than monopoly or oligopoly (ex. Negative social capital networks, cartels and other collusive arrangements, poor regulation encouraging administrative discretion,

²⁰⁶ Douglass C. North, *Institutions, institutional change and economic performance* (Cambridge University Press, 1990), 3.

²⁰⁷ Evan S. Lieberman, "Causal Inference in Historical Institutional Analysis A Specification of Periodization Strategies," *Comparative Political Studies* 34, no. 9 (2001), 1013.

lack of transparency turning information into privileged capital for power-holders and their relations).”²⁰⁸

It is important to highlight in this context that by concentration of power this study does not refer to the constitutional design of separation of powers of a state. Since corruption is about the *abuse of power*, we refer to instances of concentration of discretionary decision-making opportunities in the hands of single elected or appointed officials whose power remains unchecked.

Moreover, institutions that limit discretionary decision-making are the existing checks on power. These do not have to be necessarily only the anti-corruption rules. They include also public institutions that are put in place to ensure that public office is not abused or misused. The institutions that this study assesses, in this context, are the bribery legislation, whistleblowers protection, conflict of interest (COI) and asset declaration, anti-corruption strategies, auditing frameworks, internal control mechanisms, and anti-corruption agencies. Anti-corruption measures within the civil service, state-controlled agencies and the off-budget funds, the legislature, political parties, and law enforcement agencies are also examined as salient checks between the executive and the parliament. Different designs of these institutions explain why some countries rolled back on their previous anti-corruption achievements after accession.

The analysis, in this context, pays particular attention to the identification of the *legal loopholes* of these institutions that lead to more concentration of discretionary power, increase, as a result, opportunities for rent seeking, and allow policy-makers and public servants to misuse public office for private gains. We define here ‘legal loopholes’

²⁰⁸ Alina Mungiu-Pippidi, “The Transformative Power of Europe Revisited,” *Journal of Democracy* 25, no. 1 (2014), 9-10.

(also *institutional weaknesses*) as the vulnerabilities that are embedded in institutional designs. If unchecked or poorly monitored they can be misused for private gain. An example of an *institutional loophole* would be the rule that requires asset declarations for elected officials but does not provide for the existence of an appropriate agency capable of verifying the veracity of these statements. Or, the rule would require an oversight mechanism but it would not be empowered to impose sanctions in case irregularities are detected or no declaration is filed at all. In this context, despite the existence of conflict of interest legislation, it can be easily bypassed or abused since its infringement does not trigger any de facto penalties. Whether or not public officials can exploit such institutional ‘loopholes’ depends hence on the quality and effectiveness of existing internal checks on power. Weak or inappropriately enforced checks erode institutional designs, in this case, and consequently incentivize more frequent abuse of existing institutional ‘loopholes’.

B. Judicial Independence

The study further assesses the role of *independent judicial systems* in containing corruption, as a separate branch of government and a domestic check on political power. I argue that *when* internal checks within the executive and the legislature are poorly functioning strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance. The key mechanism overseeing political power, especially in the context of young democracies, is a strong and independent judiciary that can back up existing anti-corruption institutions by ensuring that institutional ‘loopholes’

are not abused, and the rule of law is respected. I finally argue, in this regard, that different states can ensure a strong independent judiciary via different combinations of judicial institutions.

This study defines judicial independence to be the capacity of a judicial system to sanction instances of political corruption without the interference of external actors. An example of interference of an external actor is the undue influence exerted by the executive over courts or individual judges to sway judicial behavior. This conceptualization builds hence on the definition of judicial independence provided by the European Commission: “capacity of the justice system to handle corruption cases efficiently, including high-level corruption.”²⁰⁹ Also drawing from the considerations of the Commission, the study distinguishes between *institutional* (courts’) and *decisional* (judges’) judicial independence. In this context, the Commission considers that, “effective independence safeguards ... within the judiciary are essential in securing the necessary framework for an efficient judiciary which renders justice in corruption cases in an objective and impartial manner without any undue influence.”²¹⁰

To measure judicial independence quantitatively, we use the World Bank’s rule of law governance indicator, which “captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.”²¹¹ This measure was chosen over other existing indicators of judicial independence because it represents an aggregate measure of similar indicators. It also

²⁰⁹ European Commission, *Anti-Corruption Report 2014 - Chapter Slovakia*, 4.

²¹⁰ European Commission, *Anti-Corruption Report 2014 - Chapter Slovakia*, 4.

²¹¹ Definition provided by the World Bank for the WGI rule of law. The annual country's score ranges from approximately -2.5 to 2.5, where -2.5 indicates no rule of law and 2.5 indicates outstanding rule of law.

provides a long enough period of data points (1995-present) to be able to compare it to the control of corruption indicator assessed in a similar manner by the same World Bank world governance indicators data collection agency.

Despite the normative importance of the concept, scholars have had issues operationalizing judicial independence.²¹² This study proposes to use the criteria discussed in the literature review and theoretical considerations sections to assess, compare and contrast institutional judicial frameworks. The study also analyzes the reform process that enhance the independence of the judiciary as a branch of government that helps avoiding abuse of power, and subsequently, improving anti-corruption performance. The criteria to be used for a comparative assessment of judicial independence longitudinally and across cases are as follows:

(a) *Legal framework and organization* – assesses the constitutional separation of powers, and the organization of the court system that should balance equitably powers among the branches of government. This section provides answers to questions such as: Is there a clear separation of powers according to the existing legal framework? When did the separation of powers occur? Does the judiciary have an independent self-regulatory body that represents it as a separate branch of power? This criterion helps assess the structural safeguards that underpin an independent judicial branch.

(b) *Court administration* – analyzes the competencies of the main actors responsible for the administration of courts and whether they have misused their powers. It provides answers to questions such as: Who administers the courts? Is there an independent body that administers the courts? How much executive influence is exerted on the courts administration? Is power misused? If so, via what tools? What are the

²¹² Gibler and Randazzo, "Testing the effects of independent judiciaries."

competences and powers of court presidents? This criterion helps assess to what extent court administration is a salient aspect of judicial independence when attesting variation in anti-corruption performance.

(c) *Judges* – reviews judges’ terms of appointment, promotion, transfer, and dismissal, salary and working conditions as indicators of their independence and effectiveness. It provides answers to questions such as: Are judges considered independent? What ensures (or not) their independence? What are the loopholes that allow external veto players influence judicial independence? What are the main mechanisms used to influence judges? This criterion helps assess the dimension of decisional independence of judges.

(d) *Judicial councils* – analyzes whether there is a separate independent agency that represents the judiciary. It also reviews the composition and main competences of existing councils, and how they enhance the independence of the judicial branch. It identifies how politicized its activity is, and how strong of a say it has in its relation with the executive.

(e) *Finances* – this criterion analyzes how the court system is financed, according to what criteria, and what institutions have the final decision on the budgeting process and allocation of funds. It provides answers to questions such as: Who is financially responsible for the courts’ budget? Does the executive or other responsible agency abuse the allocation of funds mechanism? This criterion assesses the strength of the financial leverage of the executive over the judiciary.

(f) *Public prosecutor’s office* – reviews prosecutors’ organization, terms of appointment, promotion, and dismissal, as indicators of their independence and

effectiveness. It provides answers to questions such as: Part of which branch it is? Does this choice influence its workings and relation with the judiciary? Are there specialized units? Who appoints the special/general prosecutor? To what extent is this process politicized? This criterion assesses the degree of independence of prosecutors and to what extent it affects the process of investigation of high-profile cases of political corruption.

(g) *Specialized units* – assesses the activity of specialized units within the judiciary and the prosecution system. This section provides answers to questions such as: Are there specialized units and how are they organized? Are they considered effective mechanisms for dealing with serious cases of corruption and organized crime? How much added value they bring to explaining variation in anti-corruption performance?

This selection of criteria is by no means an exhaustive list of indicators of an independent judiciary. They have been selected based on the common aspects highlighted in various assessment reports, international institutions, and the literature analyzed in this study. Each anti-corruption frontrunner case, this study finds, portrays a different constellation of judicial arrangements that ensure its judicial independence. One thing that judiciaries in these states have in common, however, is their insulation from excessive executive involvement.

Hypotheses testing

This dissertation uses a multi-method approach to test the two hypotheses put forward. According to Goertz, a multi-method framework of analysis involves cross-case

and within-case causal inferences within the same research project.²¹³ In this section I explain how I proceed about testing each of the two hypotheses. The first hypothesis (re-stated below) is tested based on *comparative case study analysis*: the “use of a combination of within-case analysis and cross-case comparisons within a single study.”²¹⁴ When explaining the phenomenon of corruption and why certain states backslide on previous achievements to contain it, quantitative studies have proven to miss important aspects. In this context, scholars predominantly analyze the developments in this region as being uniform and producing similar outcomes across the region (i.e. economic integration, economic crisis, EU membership, etc.). However, we do observe significant intra-regional differences in general political developments, and in the control of corruption, in particular, not only before but also after accession. Scholars who employ a qualitative approach tend to limit their analysis to one or two case studies to draw regional generalizations. To avoid potential selection bias in the testing of the first hypothesis, this study analyzes qualitatively each of the eight cases in (a) a longitudinal manner, and then continues with (b) a cross-sectional analysis of the eight cases. These methods are selected to explain the idiosyncrasies that shaped anti-corruption performance patterns, and also to identify common regional explanatory patterns.

(H₁) States that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession.

²¹³ Gary Goertz, “Multimethod research, causal mechanisms, and selecting cases” (*Unpublished manuscript*, 2015), 7.

²¹⁴ Alexander L. George and Andrew Bennett, *Case studies and theory development in the social sciences* (MIT Press, 2005), 18.

To test this hypothesis, I employ a two-step analysis. This study assesses the institutional designs that have been adopted or reformed starting with the early 1990s. It also identifies the legal loopholes entrenched in the institutional arrangements that allow for more concentration of discretionary decision-making power and consequent increase in rent-seeking behavior on behalf of elected and appointed officials. In the context laid above, first, it analyzes each of the eight case studies by employing a *longitudinal analysis*. In a second step, it draws cross-case comparisons among the eight cases. To assess the differences in institutional designs between the eight cases, this study employs the *structured, focused comparison* method. The study compares institutional developments in the general anti-corruption legislative framework, and the workings of main bodies dealing with the implementation of anti-corruption efforts, that together shape the anti-corruption institutional design of a country. The chapter hence identifies the institutional weaknesses of each design that allow or help contain concentration of discretionary decision-making power.

The institutions meant to contain such type of concentration of discretionary power, identified in the literature and in various corruption assessment reports of international organizations, relate to the existing general anti-corruption legislation. As already mentioned, particular focus is placed on the bribery legislation, whistleblower protection, conflict of interest (COI) and asset declaration, anti-corruption strategies, auditing and internal control mechanisms frameworks, the design of anti-corruption agencies, and anti-corruption mechanisms in the civil service. The study also compares vulnerabilities in the legislative process, political party financing, law enforcement and prosecution (see Table D.1 for the full list of criteria). In this context, this study argues

that, across all cases, the internal control mechanisms are the institutions that have been subjected among the least to reform before EU accession. They represent the region's Achilles heel. The study, in this sense, argues that states with fewer institutional weaknesses, that have either been reformed or addressed before accession, display lower or stable corruption levels after accession.

The study also identifies regional trends in anti-corruption performance. A cross-case comparative analysis, in this regard, is undertaken based on the findings first drawn from the longitudinal case studies. The findings from the case studies are also contrasted within the subgroups that display similar trajectories: states that display *improved* anti-corruption performance are contrasted to the groups that display *stable* and subsequently *worsening* levels of political corruption after accession, the backsliders. This comparative analysis explains and assesses the reforms in anti-corruption policy that were carried out from the early transformation years up until 2014, and identifies which loopholes were addressed and which ones were left behind.

Considering that the study finds weak institutional checks across many of the cases when it comes to control mechanisms within the executive and the legislature, we argue that the establishment of an independent judiciary explains why some states with weaker anti-corruption institutional arrangements still register stable or improved anti-corruption performance results after accession. In this sense, the study argues that frontrunners in anti-corruption performance display stronger safeguards (both institutional and decisional) of judicial independence than the backsliders that upheld existing anti-corruption institutions and contain abuses of public office.

The second hypothesis, in this regard, is meant to test the aforementioned argument that states that managed to establish independent and effective domestic oversight and control mechanisms – above all independent judiciaries – before their EU accession are better at containing concentration of discretionary decision-making power, preserving the rule of law, and subsequently improving or stabilizing their anti-corruption performance.

(H₂) States that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession.

Hence, after a thorough analysis of the institutional framework of the eight cases, this study continues with the analysis of the added value of domestic control and oversight mechanisms, with a particular focus on the role of the judiciary. This part of the study employs a *nested analysis model* to bring together the complementary strengths of case study research and statistical analysis.²¹⁵ A preliminary *regression analysis* allows for the selection of a smaller number of cases for further in-depth case study analysis. Three cases, Estonia, Poland, and Slovakia, that have small residuals and cover a maximum of variation in the independent (independent judiciary) and dependent (control of corruption) variables are selected to test the hypothesis.

This study also seeks to maximize the variance in the dependent variable, change in control of corruption. Since existing indicators of corruption do not always measure

²¹⁵ Evan S. Lieberman, "Nested analysis as a mixed-method strategy for comparative research," *American Political Science Review* 99, no. 03 (2005): 435-452.

control of corruption in similar ways (i.e. WGIs do not always correspond to the estimates produced by the Freedom House *Nations in Transit* annual reports), and because of the limited number of cases in this study (N=8) that dismisses the possibility of a large-N analysis with robust findings, a qualitative analysis of the dependent variable across all eight cases complements the findings of the initial regression analysis to cross validate case selection.

The subsequent analysis follows the same logic that is employed to test the first hypothesis. A *structured, focused comparison* is used to identify what constellations of institutional arrangements of an independent judiciary lead to improved or stable anti-corruption performance. The analysis starts with a longitudinal analysis of each of the three cases based on the criteria highlighted in the analysis of the independent variable. Each case study concludes with a section that highlights what aspects carry more weight in underpinning the independence of the judiciary, and the main areas for concern. It concludes whether the problems that persisted in 1990s have been reformed or carried into present.

The study then compares across cases the findings from the longitudinal analyses. The comparative analysis concludes by highlighting common weaknesses and strengths that distinguish the frontrunners from the laggards in anti-corruption performance after accession. Moreover, the findings of the structured, focused comparison are complemented with a total of 55 interviews conducted with policy experts, judges, public servants, and policy-makers in the selected cases to shed more practical insights on the mechanisms at work as well as the more recent developments that are not yet covered by assessment reports.

Deriving from the literature on corruption, hence, this study analyzes the institutional differences and reforms in the judiciary, carried out in the 1990-2014 period, that help ensure its independence to monitor and address breaches of rule of law by elected and nominated public officials. It also identifies the weaknesses and areas of concern that make the judiciary as an institution weak at sanctioning corrupt behavior of political elites. The judiciary, in this context, is considered to be the main body that can limit excessive concentration of discretionary power in the hands of elected and appointed decision-makers.

Because of the time lag in the effect of judicial reforms, this study also argues that states that had more effective reforms enhancing the independence of judiciaries put in place before they embarked on their European integration journey are better at containing corruption today than their counterparts. In this context, the study argues that states that managed to develop independent monitoring and oversight mechanisms able to keep accountable the political power before they joined the EU are more likely to contain corruption after accession. The evidence that is presented in subsequent chapters confirms the two hypotheses.

Case selection

Since this study seeks to explain one dimension of democratic backsliding in the CEE region, and namely corruption, the universe of cases for this study is comprised of eight case studies. It analyzes the newer EU member states that joined the Union in the 2004 enlargement wave. The conclusions to be drawn from this analysis are hence

representative for the new CEE member states only but the findings drawn based on these eight cases can have a larger regional impact in Central and Eastern Europe, the Balkan countries aspiring for EU membership, as well as for the states in the post-Soviet space.

Bulgaria and Romania are not considered in this study because they display quite different socio-economic characteristics from the other new EU member states under scrutiny. Also, economically they are more backward and therefore public officials face a different level of incentives in addressing corruption. Moreover, Romania and Bulgaria had a very different starting base than the other CEE states in terms of their fight against corruption. They have also joined the EU three years later under somewhat stricter set of conditions and reforms to be implemented in regards to rule of law, organized crime, and corruption due to their particularistic political circumstances.

In this context, the first hypothesis proposed in this study is tested on all eight cases. We assess how the institutional designs of Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia explain patterns of anti-corruption performance in these countries. To test the second hypothesis put forward in this study, we limit our analysis to three cases. Estonia, Poland, and the Slovak Republic are the cases selected for in-depth analysis of judicial independence. This subsection further details how these cases have been chosen.

To explain how the institutional aspects of an independent judiciary influence the anti-corruption performance of a country, this study narrows down its research to three cases for in-depth analysis by employing a *nested analysis model*. This method allows the preservation of generalizability of findings across the entire set of cases in the study by selecting a reduced number of cases representative for the entire EU8 sample (all new EU

members from CEE region that joined in 2004) and provide more leverage into the research question proposed in this study.²¹⁶ In brief, the initial statistical analysis in a nested model,

“determines the explanatory power of a model, the causal effects of the independent variables, and their statistical significance. The residuals of the cases provide the basis for case selection. The inferential goal of the qualitative analysis is to discern whether the significant independent variables are linked to the dependent variable through causal mechanisms. A nested analysis of this kind is argued to yield synergistic value because of the opportunity to make integrated causal inference that is infeasible in single-method designs.”²¹⁷

To explain the mechanism at work between judicial independence and anti-corruption performance, the study seeks to research the cases that confirm the association identified in the literature. The study employs an *X₁/Y-centered research approach* since we are concerned with investigating the causal relationship (testing existing hypotheses) that connects an independent judiciary (X₁ cause) with control of corruption (Y outcome)²¹⁸, a well-established correlation in the literature on corruption. This research is hence a mix of model-testing (Mt-SNA, we start with testing a theory) and model-building (Mb-SNA, we hypothesize about the main aspects that form the causal mechanism at work) small-N analysis. According to Lieberman, furthermore,

“When carrying out Mt-SNA, scholars should only select cases for further investigation that are well predicted by the best fitting statistical model. Country cases that are on, or close to, the 45-degree line (plotting actual dependent variable scores against regression-predicted scores) should be identified as possible candidates for in-depth analysis.”²¹⁹

In this sense, we first identify the typical or “on-the-line” cases (ones that lie on or in immediate proximity of the regression line, small residuals) through a basic linear

²¹⁶ Lieberman, “Nested analysis.”

²¹⁷ Ingo Rohlfing, “What you see and what you get: Pitfalls and Principles of Nested Analysis in Comparative research,” *Comparative Political Studies* 41, no. 11 (2008), 1493.

²¹⁸ John Gerring, *Case study research: Principles and practices*, Chapter 28 (Cambridge University Press, 2006).

²¹⁹ Lieberman, “Nested analysis,” 444.

regression. We run the regression on three different samples and for three different moments in time. Because of the very small-N and the implicit statistical errors such an analysis might very likely carry along, we run the regression (1) on all 28 EU member states (EU28), (2) on the eight EU member states that joined in the 2004 enlargement wave (EU8), and finally (3) on all 11 member states that joined the EU in 2004 and onwards (EU11, adding Romania, Bulgaria, and Croatia to the sample in Model 2). The selection of this periodization strategy is embedded in the methodology shared by historical institutionalism studies.¹ These years have been selected as reference moments for institutional origination (1995 – the set up of institutions after the communist era), institutional change (2004 – the EU pre-accession conditionality reforms), and current institutional setup (2014).

We run OLS regressions of control of corruption on rule of law for three points in time for each of the three samples: 1995 (using the 1996 WGI scores), 2004 (2005 WGI scores) and 2014 (2015 WGI scores). Then, we compare the positioning of cases for the three periods to identify which of the cases fit closest to the regression line across the three periods. We use the World Bank's Governance Indicators for control of corruption (DV) and rule of law (IV) to run the statistical analysis. By maximizing variation on the independent as well as dependent variable, we find that Estonia, Poland, and Slovakia are the three typical cases that are most representative of the universe of cases. To test the second hypothesis, we conduct in-depth case study analysis on these cases alone. This research strategy of selecting fewer cases for in-depth analysis allows achieving two important objectives: representativeness (typicality) and variation (causal leverage).²²⁰

²²⁰ Gerring, *Case study research*, Chapter 28.

Data collection

This study combines several data collection techniques such as *desk research* (analysis of secondary sources, national legislation, assessment reports of international organizations), and *primary data* collection. *Desk research* is used in every stage of this study, and namely, to (a) review the existing literature on democratic backsliding, corruption, and institutional quality (b) assess the institutional weaknesses in the legislative framework of the cases in this study, and (c) evaluate judicial independence and its impact on anti-corruption performance. The study makes use of national legislative acts and major non-conventional secondary *sources*: assessment reports of the European Commission Monitoring Reports²²¹, Freedom House *Nations in Transit* reports for the period 2001-2014²²², most recent 2014 EU Anti-Corruption Report²²³, Transparency International's *National Integrity System* (NIS) Assessments²²⁴, GRECO compliance evaluation reports²²⁵, World Bank Anti-Corruption in Transition reports²²⁶, and Open Society Institute Monitoring the EU Accession country reports.²²⁷

Desk research is complemented by *primary data collection*: interviewing (a) experts working on corruption and judicial reform in the domestic contexts of the cases under focus, (b) policy-makers and public servants who can assess the quality and conditions for institutional reform, (c) judges to assess the independence of the judiciary and current issues, and (d) civil society leaders and investigative journalists to assess the

²²¹ European Commission, *Monitoring Reports*, www.ec.europa.eu/enlargement/archives.

²²² Freedom House, *Nations in Transit 2001-2014 reports*.

²²³ European Commission, *EU Anti-Corruption Report 2014*.

²²⁴ Transparency International, <http://www.transparency.org/whatwedo/nis/>.

²²⁵ GRECO, http://www.coe.int/t/dghl/monitoring/greco/documents/index_en.asp.

²²⁶ World Bank, *Anti-Corruption in Transition*.

²²⁷ Open Society Institute, *Monitoring the EU Accession Process*; also *Judicial Independence*.

role of domestic control and oversight mechanisms. In the case of three states, Estonia, Poland, and Slovakia, this analysis is hence complemented with findings from 55 in-depth elite and expert interviews conducted in the period September-October, 2016 in Bratislava, Banska Bystrica, Warsaw, Tallinn and Tartu.

This study provides the necessary comparative data to test the proposed hypotheses, and draw conclusions valid for the entire CEE region. Moreover, the findings of this study can be of use to candidate countries aspiring to join the EU, but also to EU institutions that undertook the role to monitor the democratization process of aspiring countries. Also, it will contribute to the existing literature on corruption, EU post-accession compliance, democratization and institutional quality, and Europeanization of states in the context of EU accession.

Fieldwork Research

As part of this dissertation, I have conducted a total of 55 interviews (51 in-person, and 4 by Skype) in the period September 16 - October 8, 2016. A total of 80 potential interviewees have been contacted with interview requests. 25 of them have not responded to the request.²²⁸ Altogether, 20 elite and experts interviews were conducted in Slovakia, 16 in Poland, and 19 in Estonia (see Annex D). Additionally, I have also

²²⁸ For instance, on September 8, 2016 after several emails sent to the European Commission Office in Bratislava, I have called the institution to schedule a meeting with their political analyst. They have not returned my phone call. The same day, I have visited the Supreme Court and the General Prosecutor's Office in an attempt to speak to the institutions' spokespersons, but I was not allowed to access any of the institutions without prior arrangements. Another example, after sending a request for an interview to the Polish Ministry of Justice addressed to Mr. Sebastian Kaleta, current Secretary of State, I was advised by email²²⁸ to send in the interview questions, and someone will respond in written form since no one from the Ministry was able to receive me due to prior commitments and time restraints. As of now, I have not received any answer from representatives of the Ministry of Justice.

received answers to interview questions by email conversation from two respondents who could not meet me in person due to conflicting scheduling. As part of the field research, in Warsaw I have also attended two sessions on the rule of law in Poland, and on the post-soviet judiciary, as part of the annual meeting of the Human Dimension Implementation Meeting (HDIM) of OSCE participating States organized every year by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).²²⁹ OSCE meeting notes have been included in the qualitative analysis on judicial independence.

The objectives of the field research, the detailed study procedures (design, sampling, measurement, instrumentation), consent procedures, internal validity and data collection are included and explained in the Research Protocol (see Annex D).²³⁰

Why a multi-method approach to the topic?

While this study undertakes a nested model analysis to select the representative cases for an in-depth analysis of judicial independence, it is still a predominantly qualitative piece of research. This subsection explains why the study undertakes this approach.

In light of the literature review, numerous existing theories do not vary across the cases in this study in a way that might explain anti-corruption performance (i.e. EU membership, economic integration, economic crisis, etc.). Yet there is significant variation in progress states made in establishing independent judiciaries in 1990s that

²²⁹ http://www.osce.org/odihr/hdim_2016

²³⁰ As a note, the study asked for IRB approval for conducting interviews in all eight states, however only three have been included in this study due to the choice of a nested analysis model that allows generalization of findings based on a restricted number of in-depth case studies.

could at least plausibly explain later anti-corruption performance. Therefore case studies are needed to explore if in fact there is evidence that these factors explain outcomes.

Moreover, from a theoretical perspective, there are gaps in the data available to draw more general regional conclusions on anti-corruption performance: few cases for comparison, and few systematic findings. First, according to Open Society Institute's (OSI) EU Accession Monitoring Report there is not enough comparative research data available on corruption in CEE states that would provide the necessary evidence to draw comprehensive and rigorous generalizations.²³¹ This study intends to address this issue by looking at the entire universe of cases, that is the new eight EU member states in the CEE region that joined in 2004, in a comparative perspective to test the first hypothesis. Second hypothesis is tested by employing a nested model that allows for findings to be generalized for the entire universe of cases.

As already mentioned, with the exception of several studies that employ a systematic approach, most studies are qualitative pieces that use one or two case studies of randomly selected countries.²³² A qualitative approach to the study of political corruption is more generally a result of the complex intricacies of studying the phenomenon and inability to use hard cross-sectional and longitudinal data for robust statistical analysis. Also, according to OSI EU Monitoring Accession Report (EUMAP), evaluation of corruption in individual states "are of limited use unless they are detailed and institution-specific".²³³ The EUMAP's individual country reports also state that, "there is a general lack of detailed research on corruption in candidate countries, both in

²³¹ Open Society Institute, *Monitoring the EU Accession Process*, 58.

²³² Kriszan, 2009; Maniokas, 2009; Mungiu-Pippidi, 2006, 2008, 2013; Batory, 2010; Vachudova, 2009.

²³³ Open Society Institute, *Monitoring the EU Accession Process*, 65

terms of survey research and qualitative analysis of the vulnerability of various institutions to corruption.”²³⁴

If the study employs two cases however, depending on the choice of the studies, conclusions either support or contradict the occurrence of a specific phenomenon, in this case – corruption. Moreover, only two of the systematic studies employ a longitudinal analysis for the post-accession period, both drawing on formal modeling.²³⁵ Kartal, at the end of his study, highlights the need for detailed comparative qualitative analyses that trace anti-corruption reforms in CEE countries since the early 1990s.²³⁶ This last statement reinforces the idea that corruption cannot be studied only at an aggregate level for a thorough understanding of the phenomenon, its causes and consequences. A detailed, highly idiosyncratic analysis is required to understand the context-specific factors that might display different impacts in different societies.²³⁷

Hence this dissertation adds to the literature on democratic backsliding, institutional quality, and corruption by proposing a blend of longitudinal and cross-case analysis methods that will analyze a longer post-accession period than used in the already existing studies, and namely 2004 to 2014 (with some extensions to 2015-2016 from interview data). It also employs a systematic qualitative approach that will have as focus of analysis all eight CEE new EU member states that joined the EU in 2004. This combination of a longitudinal approach and a comprehensive qualitative comparison adds to the very few systematic quantitative endeavors in the literature²³⁸, as well as to the

²³⁴ Open Society Institute, *Monitoring the EU Accession Process*, 65.

²³⁵ Levitz and Pop-Eleches, “Monitoring, money and migrants”; Kartal, “Accounting for the Bad Apples.”

²³⁶ Kartal, “Accounting for the Bad Apples,” 954.

²³⁷ Karklins, *System*, 35.

²³⁸ Kartal, “Accounting for the Bad Apples.”

existing qualitative studies that are limited in their prospects for generalization due to the few and selective cases they examine.

Part Two.

Empirical Analysis

Testing Hypothesis I:
How Do Institutional Designs Explain
Anti-Corruption Performance?

5

*Explaining the Dependent Variable:**State and Evolution of Corruption*

This chapter seeks to explain the change in the dependent variable before and after accession. It reviews in this regard the dependent variable by providing a thorough assessment of the state of corruption in all eight cases in this study. For each case, the study assesses changes in population's perceptions about corruption from available international and domestic opinion polls, the World Governance Index of control of corruption, as well as changes in the foci of corruption in the transition period, the EU pre-accession stage, and after accession.

By employing the within-case analysis approach, the chapter identifies the foci of corruption of each case first. It continues with a cross-case analysis to identify similar within-group patterns of corruption as well as cross-group differences. It identifies the foci of corruption by reviewing the assessment reports of international organizations such as GRECO, the European Commission, Freedom House, and Open Society Institute for the period of 1991-2014 where available. In this regard, the chapter analyzes the changes taking place in anti-corruption performance starting from the early 1990s until 2014 (last year of data collection) by explaining how perceptions and foci have evolved.

It collapses the findings for the early transition period and the EU pre-accession period into one single cluster – 1991-2004 (before accession) – as assessment reports do not always make a clear difference between the foci of corruption that affected one period

or another. Further, it compares the findings for the 1991-2004 period (before accession), and the 2005-2014 period (after accession) to explain what differences in anti-corruption performance (measured by foci of corruption) exist between the two periods among the three groups of countries: the frontrunners (Estonia, Poland), the middle group (Latvia, Lithuania, Slovenia), and the backsliders (Czech Republic, Hungary, Slovakia).

In an initial step that builds towards the testing of the first hypothesis of this study, this chapter finds that the frontrunners have addressed more foci of corruption of the period before accession, and hence display fewer foci of corruption after accession than the backsliders. The middle group countries display overall fewer foci of corruption than the backsliders but more than the frontrunners. Also, in an attempt to triangulate the measurement of the dependent variable, this chapter finds that the qualitative assessment of corruption reflect well the quantitative assessment. Table E.1 and Figure E.2 summarize the findings of this chapter.

Introduction

At an aggregate level, the CEE region has registered major ups and downs in anti-corruption performance more recently, according to the 2014 WGI indicators (see Table E.3 and Figure E.4). Most progressive changes in control of corruption took place before the 2004 enlargement wave, with a clear positive trend only between 2001-2004. After accession, the regional situation can be characterized as mostly stable. Yet, if we zoom in, there are clear patterns that can be noticed, and that vary across time and cases. In this sense, since 2009 there is a clear regional leader in anti-corruption performance among

the new EU member states, Estonia (1.27). So far this is the only case that has steadily avoided deterioration of democratic commitments since the early 1990s. It is followed at a significant distance by Slovenia (0.69) and Poland (0.59).²³⁹

Slovenia however has registered a year-by-year decline starting with the 1990s despite keeping an overall good anti-corruption performance level for the CEE region. Poland on the other hand scored ups and downs until 2004 but since accession it is registering continued progress on its anti-corruption indicators. All other CEE states have either stayed at levels reached in 2004 or regressed on their pre-accession anti-corruption achievements. The laggards in this sense are Slovakia (0.12), Hungary (0.13), and the Czech Republic (0.32). It is interesting to note, in this context, that in 1995 Slovenia and the Czech Republic were the states with the most advanced anti-corruption performance scores in the region while the Baltic states registered the lowest ones. On the eve of EU accession, Lithuania and Poland were significantly lagging behind the other countries.

By grouping states according to their longitudinal developments in anti-corruption performance after accession, this study categorizes them into three distinctive group post-accession trajectories (according to the control of corruption WGI): the *frontrunners* or the states that improved their control of corruption scores (Estonia and Poland), the *middle group* or the countries that registered no significant within-case variation in anti-corruption scores after accession (Latvia, Lithuania, Slovenia), and the *backsliders* or the states that regressed on previous scores (Czech Republic, Hungary, and Slovakia). It is important to note in this context that these groups look slightly different if we take a snapshot of their general anti-corruption performance (including the trajectory before accession). In this sense, Slovenia is treated in the literature as a *frontrunner*, while

²³⁹ World Bank, *World Governance Indicators 2014*.

Poland is located in the *middle group* since it is closer to the yearly average for the region. Since we are interested in understanding year-by-year variation in anti-corruption performance, this study uses the typology according to the longitudinal trends displayed solely after accession.

A. Frontrunners in Anticorruption Performance

ESTONIA

Together with its Baltic neighbors, Estonia began its transformation process with one of the worst control of corruption indices in the CEE region, -0.06.²⁴⁰ In a matter of only two years, its score improved up to 0.57, in 1998, the most radical increase in the region. Since then it continued to register steady reform progress and improve its anti-corruption performance. In 2004 Estonia was registering the highest anti-corruption scores following only Slovenia. In international comparison, the corruption level in Estonia is generally considered low.²⁴¹ Yet, despite continuous reforms adopted throughout the post-accession period, and in 2013 in particular, widely broadcasted scandals of money laundering that involved Estonia's key political parties in the last couple of years have cast a shadow over its leading role as one of the least corrupt countries in the EU as a whole.²⁴²

²⁴⁰ World Bank, *World Governance Indicators* 1996.

²⁴¹ European Commission, *EU Anti-Corruption Report 2014*, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm (accessed May 15, 2016).

²⁴² Freedom House, *Nations in Transit 2014 Report*, 227.

Estonia faced most widespread corruption in the 1990s among police, customs administration authorities, and local governments. These represent the main foci of corruption identified domestically, but also by the European Commission and GRECO. Also, corruption in party financing was a salient concern.²⁴³ Until the introduction of regulations on political party funding in 1999, the situation was “a complete mess.”²⁴⁴ Corruption however was considered to be a relatively minor problem among senior officials and politicians more generally.²⁴⁵ There was also almost no evidence of corruption in the court system or among prosecutors. Local governments however seemed to represent the epicenter of corruption in Estonia. Strong local connections between economic interests and local administration represented frequent encounters. While gaining wider autonomy, governments also became increasingly less subject to external supervision and poorer control. The public procurement process was another area particularly prone to corruption in Estonia in the 1990s. The main recommendations, in this sense, to ensure a stronger control of corruption at the end of the 1990s were to implement adequate control mechanisms of local government activities, set up a monitoring and supervising mechanism for political party funding, and strengthen independence and monitoring capacity of the Public Procurement Office.²⁴⁶

In the EU pre-accession period Estonia upheld its reputation of one of the least corrupt countries in Eastern Europe and the former Soviet Union.²⁴⁷ Local administration, during this time, still remained the main locus of corruption in Estonia. The only

²⁴³ World Bank, *1999 Business Environment and Enterprise Performance Survey (BEEPS)*, <http://www.data.worldbank.org/data-catalog/BEEPS> (accessed November 17, 2015).

²⁴⁴ Daimar Liiv (Praxis Centre for Policy Studies), *Open Society Institute*, March 13, 2002, cited in “Monitoring the EU Accession Process,” *Open Society Institute*, 220.

²⁴⁵ Open Society Institute, *Monitoring the EU Accession Process*.

²⁴⁶ Open Society Institute, *Monitoring the EU Accession Process*.

²⁴⁷ Freedom House, *Nations in Transit 2003-2005 Reports*.

supervision of local officials comes from the audit commissions of local councils, “which have neither the expertise nor the incentive to pursue local corruption.”²⁴⁸ The compliance of political parties with funding regulations was another area of concern that remained unaddressed during pre-accession.²⁴⁹

After accession, Estonia has continued to distinguish itself in the CEE region with very high anti-corruption performance. It enjoys the reputation of the least corrupt country in Eastern Europe and in the former Soviet space since 2011 when it replaced Slovenia as regional leader in anti-corruption performance. According to the 2013 Eurobarometer on Corruption, 65 percent of the population thinks corruption is widespread.²⁵⁰ That makes it the country with the lowest estimate in the region, and 11 percent below the EU average. It is doing better than some of the older member states as well (Austria, Belgium, and France). Moreover, 30 percent of respondents think that the Estonian government efforts to combat corruption are effective, which places it 7 percent above the EU average. 39 percent of Estonians consider that there are enough successful prosecutions in the country to deter people from corrupt behavior, 13 percent above the EU average, and only 11 percent below the EU maximum. According to TI’s Corruption Perception Index (2014), Estonia is on the 25th place out of 175.²⁵¹

To conclude, corruption levels in Estonia are comparatively low for international standards, and the lowest among the new EU member states in the CEE region.

POLAND

²⁴⁸ Freedom House, *Nations in Transit 2005 Report*.

²⁴⁹ Freedom House, *Nations in Transit 2004-2005 Reports*.

²⁵⁰ European Commission, *2013 Special Eurobarometer 397* (2013).

²⁵¹ Transparency International, *2014 Corruption Perception Index*, www.transparency.org/cpi2014/infographic/regional/european-union-and-western-europe

Although in 1996 Poland was rated better than most of its CEE neighbors in controlling corruption²⁵², the period that followed until its EU accession was marked by a steady decline in its performance. In 2002, according to corruption assessment reports, graft was “at best not decreasing.”²⁵³ The country registered its first improvements in 2004, according to its WGI control of corruption estimate. This positive trend continued uninterrupted until 2013.²⁵⁴ According to the most recent estimates, Poland’s anti-corruption performance is rated third in the CEE region only after Estonia and Slovenia.

During the early transformation period, corruption represented a serious concern in Poland. Both local and international assessments suggested that the sectors most widely affected by corruption in the 1990s were healthcare (67 percent of respondents), judiciary (49 percent), local governments (39 percent), and central administration (25 percent).²⁵⁵ Other areas affected were the off-budget agencies, judicial and prosecution bodies, customs, political party finance, and public procurement. Privatization was also a process particularly affected by corruption.

Agencies using off-budget funds represented another important locus of corruption, and “one of the main loci of political party patronage (along with State-owned companies)” in the 1990s.²⁵⁶ This share of public spending (that represented 40 percent of expenditures and 30 percent of revenues in 1999²⁵⁷) is excluded from the state budget, does not require parliamentary approval, and is not subject to parliamentary supervision.

²⁵² World Bank, *World Governance Indicators 2014*.

²⁵³ Open Society Institute, *Monitoring the EU Accession Process*, 396.

²⁵⁴ World Bank, *World Governance Indicators 1996-2014*.

²⁵⁵ Open Society Institute, *Monitoring the EU Accession Process*.

²⁵⁶ Open Society Institute, *Monitoring the EU Accession Process*, 398.

²⁵⁷ 1999 World Bank data, cited in Open Society Institute, *Monitoring the EU Accession Process*.

The World Bank portrays these institutions as “States within States: public sector agencies that control and in some cases also lend substantial funds, have important links with the private sector and with political parties.”²⁵⁸ At the same time, the World Bank found evidence of important amount of money being offered in exchange for the adoption of certain laws hence raising questions about the absence of regulations on lobbying.²⁵⁹

Another area prone to corruption in the 1990s was the judiciary. Courts were considered among the most corrupt institutions. Assessment reports cite poor court organization, difficult procedures, long delays and poor disciplinary mechanisms among the main issues that make the judiciary vulnerable to corruption. In this sense, the judiciary represented an area during the pre-accession period that the European Commission pressed for immediate reform.²⁶⁰ Polish public services such as traffic police, customs, healthcare, and education were also affected by widespread corruption in the 1990s.

The 1999 World Bank report identified “high level corruption”²⁶¹ as the most salient form of corruption for Poland in its EU accession process.²⁶² The European Commission has consistently expressed its concern regarding corruption in Poland and condemned government inactiveness to genuinely address the phenomenon. In 2004, perception on corruption among Poles was worsening. This attitude was also reflected in 2004 TI’s Corruption Perception Index where Poland received the lowest corruption score (3.5 out of 10) in the entire EU. One of the causes for the worsening of control of

²⁵⁸ World Bank, *Corruption in Poland*, 18.

²⁵⁹ Open Society Institute, *Monitoring the EU Accession Process*, 427.

²⁶⁰ Open Society Institute, *Monitoring the EU Accession Process*.

²⁶¹ The report defined “high level corruption” as corruption committed by high and elected officials including parliamentarians, ministers, prosecutors and judges.

²⁶² World Bank, *Corruption in Poland: Review of Priority Areas and Proposals for Action* (Warsaw, 1999).

corruption in Poland was explained by the extreme difficulty to address the phenomenon since “the population has accepted it.”²⁶³

Poland’s anti-corruption performance has improved over the years since it joined the Union in 2004. According to the most recent 2013 Special Eurobarometer on Corruption, 82 percent of Polish citizens acknowledge that corruption is a widespread phenomenon in their country. This is six percent higher than the EU average.²⁶⁴ Only 28 percent consider that government efforts to combat corruption are effective, five percent higher than the EU average. Further, 30 percent of respondents agree that there are enough successful prosecutions in Poland to deter corrupt practices, five percent above the EU average. This data display a less optimistic image of how corruption is overall perceived by the Poles, but a slightly better picture of government effectiveness in combating corruption when compared to the EU. If we look at the WGI indicators for control of corruption, we do see that Poland is registering constant progress starting with 2004.²⁶⁵

To sum up, according to Freedom House, *2014 Nations in Transit* (NIT) report, major scandals of institutional and political corruption still persist. They are also more frequently reported than before. A number of highly-ranked public officials, including the former Deputy Interior Minister, Deputy Defense Minister, and Transport Minister, were facing accusations of corruption in 2013-2014.²⁶⁶ Cases continue to pile up over the years, even if the institutions designed to address the problem are *prima facie* able to effectively contain the phenomenon. NIT 2014 assessment report on Poland concludes

²⁶³ Freedom House, *Nations in Transit 2005 Report*.

²⁶⁴ European Commission, *2013 Special Eurobarometer* 397.

²⁶⁵ World Bank, *World Governance Indicators 2014*.

²⁶⁶ Freedom House, *Nations in Transit 2014 Report*, 482.

that, “public figures are undeterred by the prospect of punishment, and that corruption is more entrenched than previously thought.”²⁶⁷ Moreover, according to EC, the latest corruption-related cases and accusations resulted in resignations and dismissals, hence “demonstrating that politicians were held politically accountable.”²⁶⁸ Yet, these have not triggered any consequent penalties.

Up until accession, evidence shows different trajectories in anti-corruption performance for the two frontrunners. Whereas Estonia started from a very low score, and has improved significantly to the point of accession and after, Poland has started with one of the highest control of corruption scores, and towards accession registered one of the lowest. There is evidence to suggest that a major corruption scandal just before accession skewed public perception and therefore the low ranking. In terms of foci of corruption, both states addressed most of them. The remaining ones carry on from the 1990s. Estonia, in this regard, still experiences corruption in party financing and local public administration. Poland struggles with corrupt practices also in party financing, as well as in public procurement, and state-owned companies.

B. The Middle Group in Anticorruption Performance

LATVIA

²⁶⁷ Freedom House, *Nations in Transit 2014 Report*, 482.

²⁶⁸ European Commission, *Anti-Corruption Report 2014 - Chapter on Poland*, 7.

In 1995, Latvia started out its anti-corruption pathway with the highest level of corruption among the 2004 EU candidate countries (-0.82, see Figure A.1). It was also the only state in the CEE region that was categorized by the World Bank as a “captured state.”²⁶⁹ In the early 1990s corruption was rated both domestically and internationally as a major problem in Latvian society and politics. Especially concerning was the influence of private interests through illicit lobbying on the legislative process. Informal processes that occurred outside state institutions and lacked openness, where private actors interested in specific legislative outputs displayed undue indirect influence, described the Latvian political decision-making process.²⁷⁰ Moreover, as many as forty percent of Latvian businesses mentioned that their economic activity was “significantly” or “very significantly” impacted by the sale of parliamentary votes.²⁷¹ The 1998 World Bank Report describes this phenomenon of “state capture” accordingly:

“[E]conomic power in Latvia has become concentrated in a small number of conglomerates. Business and political interests have become intertwined in a complex and non-transparent way, and businesses are increasingly active in political parties. Excessive concentration of economic power, due in part to weak enforcement of competition legislation, drains efficiency from the economy and presents the risk that Latvia could become prone to high-level corruption.”²⁷²

Even though the World Bank’s 1999 Business Environment and Enterprise Performance Survey (BEEPS) indicated that Latvia was relatively unaffected by administrative corruption in early transition years, the government identified public administration as one of the most salient foci of corruption²⁷³. Other foci identified by

²⁶⁹ James Anderson, “Corruption in Latvia: Survey Evidence,” World Bank Report prepared for Corruption Prevention Council, December 1998. State capture is defined as “capture of the legislative process by business interests,” Open Society Institute, *Monitoring the EU Accession Process*, 319.

²⁷⁰ UNDP, *2000 Latvia Human Development Report*, draft concept paper, 64-65.

²⁷¹ World Bank, *BEEPS*.

²⁷² Anderson, *Corruption in Latvia*, 22.

²⁷³ Open Society Institute, *Monitoring the EU Accession Process*.

international assessments were the off-budget agencies, the Parliament, the judiciary, public procurement, police and customs. In this context, there was no effective supervision of public finances on behalf of the parliament over the activities of the off-budget agencies in the 1990s. The process of distributing state guarantees by the government was also non-transparent. Moreover, the legislative process was captured by undue influences on behalf of strong business interests. The judiciary lacked independence, adequate funding and capacity that translated into frequent court delays. Finally, public procurement was categorized as the most corrupt sphere in Latvia in the early transition years. In spite of the existence of a Public Procurement Act since 1996, contracting officials can comparatively easy legally avoid tender procedures. There was no effective oversight mechanism of the procurement process either.

The government identified public administration as one of the most salient foci of corruption. In this sense, most of the anti-corruption initiatives were directed towards administrative reform. Yet, civil service reform in the 1990s is considered to have largely failed. Moreover, due to poor employment conditions, the size of public administration has significantly decreased from the mid-1990s to 2000.²⁷⁴

On the eve of Latvia's EU accession, more generally, corruption in the middle and lower-tier public administration has been diminished, but more sophisticated financial schemes at higher levels were still very much a concern.²⁷⁵ According to UNDP's 2000 Latvia Human Development Report, as many as 91 percent of Latvians held very negative views of public officials.²⁷⁶ Off-budget agencies continued to

²⁷⁴ Open Society Institute, *Monitoring the EU Accession Process*.

²⁷⁵ Freedom House, *Nations in Transit 2004 Report*.

²⁷⁶ UNDP, *2000 Latvia Human Development Report*, 34.

represent one of the most salient foci of corruption during the pre-accession period, as concluded by SAO²⁷⁷, until new budgetary rules were passed in 2001.

An important issue that was not addressed during pre-accession was the phenomenon of state capture, which directly relates to influential lobbying interests. In this sense, powerful private groups particularly in the transportation sector, and the banking sector that provided financial back up to political parties in exchange for friendly legislative policies were oftentimes making the headlines in the media.²⁷⁸ According to an investigative analysis, bribes could reach 10-20 percent of a contract's value, and most of it got rerouted to political parties.²⁷⁹ In this context, Freedom House concluded that,

“[T]he popular perception of sophisticated, large-scale corruption involving tax evasion, and of collusion between certain businesses and the upper tiers of government, continues unabated and increases the lack of trust felt toward the national governmental structures.”²⁸⁰

Another area affected by corruption before accession was the judicial branch. The institutional framework of the judiciary but also the lack of funding made it very vulnerable to undue influences on behalf of the Ministry of Justice.²⁸¹ Court delays were perceived as “one of the main possible sources of corruption in the judicial system.”²⁸² In 2003, a judicial reform program was adopted to transfer administrative and financial court management to an independent judiciary agency among other undertaken measures.²⁸³

To conclude on the state of corruption on the eve of EU accession, political graft

²⁷⁷ GRECO, *Evaluation Report on Latvia*, 17.

²⁷⁸ Freedom House, *Nations in Transit 2003 Report*.

²⁷⁹ Anita Brauna (journalist Diena), Riga, April 11, 2002, cited in Open Society Institute, *Monitoring the EU Accession Process*, 331.

²⁸⁰ Freedom House, *Nations in Transit 2005 Report*.

²⁸¹ Open Society Institute, *Monitoring the EU Accession Process*.

²⁸² Open Society Institute, *Judicial Independence* (EU Accession Monitoring Program, 2001), 225–265.

²⁸³ Open Society Institute, *Monitoring the EU Accession Process*.

was still widespread in Latvia.²⁸⁴ The country's anticorruption efforts suffered from poor institutional coordination and cooperation. While corruption in the lower levels of public administration was reduced, the phenomenon of "state capture" was not addressed almost at all. The European Commission, in this sense, criticized Latvia's slow harmonization of its anticorruption legislation to the EU standards.²⁸⁵ The judiciary was still not independent, and did not have the institutional capacity to carry out its tasks accordingly. These were also the main areas, Latvia was urged to address after its EU accession by international organizations.²⁸⁶

According to the most recent 2013 Eurobarometer Report, as many as 83 percent of Latvians believe that corruption still represents a widespread phenomenon in their country. Also, only 14 percent of respondents consider that government efforts to combat corruption are effective while 22 percent consider that there are enough successful prosecutions to deter individuals from corrupt practices.²⁸⁷ Moreover, according to TI's 2013 Global Corruption Barometer, 68 percent of respondents believe political parties are corrupt or extremely corrupt. 63 percent of Latvian respondents have a similar opinion about elected officials and civil servants.²⁸⁸

Despite being still a major concern after accession, control of corruption is steadily improving.²⁸⁹ Progress is due to KNAB's active and effective involvement in preventing corruption, but also due to the pressure stemming from international

²⁸⁴ Freedom House, *Nations in Transit 2005 Report*.

²⁸⁵ Freedom House, *Nations in Transit 2004 Report*.

²⁸⁶ Open Society Institute, *Monitoring the EU Accession Process*, 343.

²⁸⁷ European Commission, *2013 Special Eurobarometer 397*.

²⁸⁸ Transparency International (TI), "Global Corruption Barometer 2013," Latvia (Berlin: TI, 2013), www.transparency.org/gcb2013/country/?country=latvia.

²⁸⁹ Freedom House, *Nations in Transit 2006-2015 Reports*.

organizations and the EU.²⁹⁰ The involvement of anti-corruption watchdog organizations such as Delna and Providus was also assessed as contributing to an effective monitoring process of corrupt practices.²⁹¹ Some of the most powerful oligarchs including mayors, pharmaceutical businessmen, and senior court judges have been prosecuted and jailed²⁹², fact that sent a strong shock wave across society that “corruption is no longer a risk-free activity.”²⁹³ In 2014, Latvia joined the OECD Anti-bribery Convention as acknowledgment of its strong anticorruption legal framework and made progress.²⁹⁴

LITHUANIA

Similar to its Baltic neighbors, Lithuania started its anti-corruption pathway with one of the lowest estimates (-0.06) across the CEE region in 1995, according to the WGI. Despite its improvement in anti-corruption performance during the early transition years though, it still registered, along with Poland, the lowest estimate within the region just on the eve of EU accession (0.22). It continued to improve its control of corruption indicator after accession, reaching 0.48 in 2014, and placing itself among the countries with the largest positive change in anti-corruption performance. Despite significant fluctuations throughout years, Lithuania has generally improved on its control of corruption: in the period 2011-2014, corruption fell in the ranks of the country’s most pressing issues by 20 percent.²⁹⁵

²⁹⁰ Freedom House, *Nations in Transit 2006-2007 Reports*.

²⁹¹ Freedom House, *Nations in Transit 2007, 2010 Reports*.

²⁹² Freedom House, *Nations in Transit 2006-2008 Reports*.

²⁹³ Freedom House, *Nations in Transit 2007 Report*.

²⁹⁴ “Latvia to Join OECD Anti-Bribery Convention,” *The Wall Street Journal*, April 7, 2014, <http://blogs.wsj.com/riskandcompliance/2014/04/07/latvia-to-join-oecd-anti-briberyconvention/>.

²⁹⁵ Lithuanian Map of Corruption 2014, cited in Freedom House, *Nations in Transit 2015*.

Corruption was perceived one of the most significant problems in Lithuanian society in the early years of its transition. Customs administration and law enforcement bodies (courts and traffic police) were considered to be the most corrupt institutions in Lithuania throughout the 1990s.²⁹⁶ Surveys also expose the executive and the legislature as very corrupt institutions. The European Commission's 2000 Regular Report also highlighted public procurement to be of main concern.²⁹⁷ Off-budget state funds represented another area of concern. In this sense, while the state budget was approved by the Parliament, other funds like the Social Insurance Fund, the Mandatory Health Insurance Fund, and Occupancy Fund were not included in the state budget. The activities of these funds lacked transparent mechanisms of management and administration.²⁹⁸

At the official start of its European integration process, the Commission qualified the fight against corruption in Lithuania "an urgent matter."²⁹⁹ In the 1999 Regular Report, control of corruption and the reform of the judiciary were stated to be "the only two caveats to Lithuania's fulfillment of the Copenhagen criteria."³⁰⁰ Public procurement continued to be an area of serious concern as well. According to STT, corruption occurred in 70 percent of all public procurements.³⁰¹

Lithuania's extensive regulatory system was another reason for concern. Freedom House cites "the inconsistency among regulatory authorities in interpreting, applying, and

²⁹⁶ According to surveys conducted in 1999 and 2000 and TI's corruption review, cited in Open Society Institute, *Monitoring the EU Accession Process*.

²⁹⁷ European Commission, *2001 Regular Report*.

²⁹⁸ Open Society Institute, *Monitoring the EU Accession Process*.

²⁹⁹ 1997 Opinion on Lithuania's Application for Membership in the EU cited in OSI 2002, p. 359.

³⁰⁰ European Commission, *2000 Regular Report*, 15.

³⁰¹ Freedom House, *Nations in Transit 2003, 2004 Reports*.

enforcing regulations” as the main cause of concern.³⁰² The state, in this sense, still represented an important economic player in Lithuania. It regulated energy prices, set quality standards and routine administrative procedures, commanded numerous licenses and inspections, and could enforce significant penalties in case of noncompliance without any court proceedings. All these regulations created numerous avenues for corruption.³⁰³ In this context, the EU has highlighted numerous times the weak capacity of the public administration and its endemic corruption.³⁰⁴

The areas most affected by corruption and in most need of reform were thus the courts, parliament, middle and lower-tier executive branches, local governments, public procurement, party financing, customs, healthcare, and traffic police. Moreover, insufficient enforcement was considered one of the factors that hampered better control of corruption.³⁰⁵ Also, the existing mechanisms for effective investigation and prosecution of corrupt cases among elected and appointed officials were “applied in a formal or fragmented manner.”³⁰⁶ Hence, both domestic and international organizations saw corruption as a systemic problem for Lithuania and one of the country’s most salient concerns before EU accession.³⁰⁷

After accession, Lithuania registered important progresses in containing corruption more effectively. In the first years after accession, anti-corruption focus has shifted from low-tier administrative corruption to rampant political corruption. In the

³⁰² Freedom House, *Nations in Transit 2003 Report*.

³⁰³ Freedom House, *Nations in Transit 2003, 2005 Reports*.

³⁰⁴ European Commission, *Regular Reports*.

³⁰⁵ Freedom House, *Nations in Transit 2003, 2004 Reports*; Open Society Institute, *Monitoring the EU Accession Process*.

³⁰⁶ Freedom House, *Nations in Transit 2005 Report*.

³⁰⁷ Freedom House, *Nations in Transit 2005 Report*.

period 2005-2008, serious corruption accusations were brought against top officeholders at both municipal and national levels. These included violations of public procurement procedures, abuses of public office, and conflict-of-interest infringements. This period witnessed greater openness in exposing and investigating cases of grand corruption, yet there was generally little follow-through to accusations up until 2008.³⁰⁸

Starting with 2009, the right-wing coalition government has introduced important reforms that, for the first time, led to a steady improvement in the country's anti-corruption performance. Yet, according to 2013 Eurobarometer data, 95 percent of Lithuanians believe corruption is widespread in their country. Only 17 percent consider that government efforts to combat graft are effective, and 26 percent agree that there are enough successful prosecutions to deter people from corrupt practices. Also, 24 percent consider patronage and nepotism to be "a very serious or quite serious" problem for doing business in Lithuania.³⁰⁹

To conclude, corruption still represents an important problem in Lithuania despite the extensive legal framework the country has developed throughout the years. The main foci of corruption continue to be the legislature, the judiciary, the police, and the local administration.³¹⁰ TI in this regard draws attention to the weak administrative capacity and calls on the government to work on controlling corruption more efficiently by "implementing more controls in lobbying activities, better monitoring conflicts of interest, [and] increasing accountability in the public sector."³¹¹ The European Commission praises the commitment proven to combat corruption but also highlights the

³⁰⁸ Freedom House, *Nations in Transit 2009 Report*.

³⁰⁹ European Commission, *2013 Special Eurobarometer 374 and 397*.

³¹⁰ Freedom House, *Nations in Transit 2015 Report*.

³¹¹ Freedom House, *Nations in Transit 2015 Report*.

need to work on the implementation of existing provisions, and reinforce the independence and effectiveness of anti-corruption institutions.³¹²

SLOVENIA

Slovenia's international rankings on corruption indicate that it is one of the least corrupt countries in the CEE region.³¹³ The existing statistics on criminal proceedings as well as international expert opinions suggest that at least until EU accession, corruption was not a serious problem in Slovenia.³¹⁴ According to the most recent EU Anti-Corruption Report (2014) however, Slovenia's anti-corruption performance is in decline because of lack of prosecutions "amidst allegations and doubts about the integrity of high-level officials."³¹⁵ This negative trend in public perception and international rankings started immediately after its EU accession. Both domestic opinion polls and experts consider that the level of corruption, in fact, was on the increase already in 1999.³¹⁶

In 1991 Slovenia declared its independence from the former Yugoslav Republic, and shortly after, the country underwent substantial reforms that transformed it into a frontrunner for European integration among its CEE neighbors. During this period, the international community did not consider corruption to be "an acute or major threat to

³¹² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

³¹³ For Slovenia's rankings see TI, *Corruption Perception Index*, <http://www.transparency.org> and World Bank, *WGI indicators*, <http://info.worldbank.org/governance/wgi>.

³¹⁴ Open Society Institute, *Monitoring the EU Accession Process - Chapter on Slovenia*.

³¹⁵ European Commission, *EU Anti-Corruption Report 2014*, 12.

³¹⁶ Slovenian Institute of Social Sciences, "Awareness of Corruption in Slovene Society – Opinion Poll Survey 1990–1999," cited in: GRECO, *Evaluation Report on Slovenia* (GRECO 4th Plenary Meeting, 12–15 December 2000), 4, <<http://www.greco.coe.int>> .

society or democracy” in Slovenia.³¹⁷ Yet, assessment reports highlighted the perils of close interconnections especially between politics and business. Slovenia is a rather small country where extensive personal connections may easily integrate few private interests at the expense of broader public interests. Also, there was evidence that “informal networks, connections and acquaintances” represent critical ties in Slovenia that could open many avenues for corruption. Additionally, these close interactions “may give rise to networks of clientelistic or nepotistic social relationships that are corrupt but not characterised by direct exchanges of money or benefits.”³¹⁸ According to the GRECO 2000 Evaluation Report,

“Slovenia is a small country and this can bring with it some degree of permissiveness, tolerance or even a certain endogamy among officials serving in different institutions. The GET observed that there seemed to be more reliance on personal relationships among State officials and feelings of mutual trust and confidence than on a sound constitutional approach of “checks and balances” ... which is essential in the fight against... corruption.”³¹⁹

To conclude on the first decade of Slovenian transition, it is safe to say that there is no evidence that corruption was a serious problem during the 1990s.

In 1998 Slovenia started its accession negotiations with the EU. Corruption in this process was never underlined as a potential problem for the Slovenian public life or EU accession. As stated in the Commission’s 2000 Regular Report, “According to the available statistics and reports, problems of corruption are relatively limited in Slovenia.”³²⁰ After accession, however, the ever-closer informal networks between

³¹⁷ Commission of the European Union, *1998, 1999, 2000 and 2001 Regular Reports on Slovenia’s Progress towards Accession*, <http://europe.eu.int/comm/enlargement/slovenia/index.htm>; See also <http://www.greco.coe.int>, cited in Open Society Institute, *Monitoring the EU Accession Process*, 575.

³¹⁸ Open Society Institute, *Monitoring the EU Accession Process*, 579.

³¹⁹ GRECO, *2000 Evaluation Report*, 11.

³²⁰ Commission, *2000 Regular Report*, 16.

businesses and politicians became a serious and increasing concern³²¹. The Commission for the Prevention of Corruption has reported that this phenomenon was due to the fact that the vast majority of the banking sector was “at least partially controlled” by state authorities. This subsequently leads to loans being granted according to political criteria.³²² Moreover, GRECO’s most recent assessment report highlights that a “widespread culture of integrity is not yet in place and there is a low degree of public confidence in the integrity and performance of elected officials” despite advanced legal regulations put in place.³²³

According to the most recent 2013 Special Eurobarometer on Corruption, 91 percent of respondents agree that the phenomenon is widespread in Slovenia. Only 10 percent of respondents consider that government efforts to combat corruption are effective, and 12 percent believe that there are enough successful prosecutions to deter corrupt practices. Moreover, 76 percent of Slovenians believe that corruption increased in their country in the last three years (2nd highest percentage in the EU), and 88 percent believe that bribery and the use of connections is often the easiest way to obtain certain public services.³²⁴

This negative trend over the last several years changed EU’s approach towards classifying corruption in Slovenia. According to the EC Anti-Corruption Report, “bribery

³²¹ Bojan Dobovšek and Gorazd Meško, "Informal networks in Slovenia: a blessing or a curse?," *Problems of post-communism* 55, no. 2 (2008), 25-37; Dobovšek, “Report of Informal Networks – Slovenia” (Ljubljana, 2005); Petra Guasti et al., "Deficiencies in the Rule of Law in Slovenia in the Context of Central and Eastern Europe," *Varstvoslovje* 14, no. 2 (2012), http://www.fvv.uni-mb.si/rV/arhiv/2012-2/04_Guasti_Dobovsek_Azman-E.html; sources cited in European Commission, *EU Anti-Corruption Report 2014*, 4.

³²² *Ocena stanja korupcije 2013*, cited in European Commission, *EU Anti-Corruption Report 2014*, 4.

³²³ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)1_Slovenia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)1_Slovenia_EN.pdf), cited in European Commission, *EU Anti-Corruption Report 2014*, 6.

³²⁴ European Commission, *2013 Special Eurobarometer 397 and 374*.

seems rare but corruption in a broader sense is a serious concern.”³²⁵ GRECO assessment report states however that this discrepancy between negative public opinion and lack of empirical evidence of corruption can be explained by the fact that “many incidents of corruption may go undiscovered or unreported and that offenders may be convicted on charges other than corruption.”³²⁶ Finally, if in the 1990s corruption was not perceived to be a serious problem for Slovenia, then today, international institutions acknowledge that the phenomenon deserves much more attention on behalf of public authorities.

C. Backsliders in Anticorruption Performance

CZECH REPUBLIC

In 1995, according to the World Bank WGIs, the Czech Republic started out as the country with the second lowest level of corruption in the CEE region (0.65), only behind Slovenia. When it joined the European Union, however, its level of corruption was higher than the one in 1995 (0.46). It registered less progress than Slovenia, Estonia and Hungary. According to the 2012 estimates, corruption is on the rise again (0.19).³²⁷ With few exceptions, available anti-corruption indicators suggest that corruption is a salient problem, and that it has worsened after accession.

According to the Commission, corruption represented one of the three most important institutional issues in the late 1990s³²⁸. State administration, legislature,

³²⁵ European Commission, *EU Anti-Corruption Report 2014*, 6.

³²⁶ Freedom House, *Nations in Transit 2003 Report*.

³²⁷ World Bank, *World Governance Indicators, Control of Corruption for 1996-2014*.

³²⁸ Commission of the European Union, *Agenda 2000 - Commission Opinion on the Czech*

judicial system, and public procurement were the foci of corruption that remained unaddressed from the 1990s and that continued to pose a threat up to the beginning of the 2000s, as identified in the 2002 OSI assessment report. Party finance was another source of corruption, especially in the 1990s. With the reform of the party funding legislation however, it stopped to be an issue on the eve of EU accession.³²⁹ According to the same report, the Czech legislative process was also especially affected by corruption. Moreover, the nature of economic transformations, and privatization in particular, laid the future subtleties of political corruption. In this context, political officials not only became accomplices in a pervasive process of asset stripping, but also laid down legislation favorable to specific groups of investors.³³⁰ Despite several high-ranked scandals of corruption, there was very little hard evidence of corrupt practices in public administration, and even fewer convictions during the 1990s.

During the pre-accession period, the incidence of corruption and the gravity of cases among public officials were believed to be growing despite very few prosecutions.³³¹ In this same context, political parties, central state administration, banks, and the police were seen as most corrupt institutions, according to a 2001 Czech opinion survey.³³² Freedom House added to this list also the judicial branch, and the legislative process, hence forming mostly the same foci that dominated the 1990s.³³³ In May 2003,

Republic's Application for Membership of the European Union, DOC/97/17, July 1997, 96.

³²⁹ Open Society Institute, *Monitoring the EU Accession Process*, 136.

³³⁰ Reed, "Corruption in Czech Privatisation: Dangers and Policy Implications of 'Neoliberal' Privatization," paper to Princeton University-Central European University Joint Conference on Corruption, 30 October–6 November 1999, cited in Open Society Institute, *Monitoring the EU Accession Process*, 141.

³³¹ Czech Ministry of Interior, Report on Corruption in the CR and on the Following of the Schedule of the Government's Programme of Fight against Corruption 2001, 5 (approved by Czech Government Resolution no. 144, 14 February 2001), cited in Open Society Institute, *Monitoring the EU Accession Process*, 139.

³³² Centre for Public Opinion Research survey, 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 142.

³³³ Freedom House, *Nations in Transit 2004 Report*.

the government acknowledged that abuses of power and bribery were still prevalent in public institutions. A year later on the eve of EU accession, public opinion was still concerned about widespread corruption among highly ranked public officials. Despite gradual improvements, reform was considered incomplete, with serious shortcomings in politics.³³⁴

Czech Republic joined the EU with a bleak picture of its political corruption situation. A September 2005 domestic public opinion survey showed that the Czechs identified bribing and corruption as having “the greatest influence over politicians’ decision making, followed by interest groups and lobbying.”³³⁵ Another domestic public opinion survey showed that the two issues that respondents were most dissatisfied with were the high levels of corruption (83 percent) and economic crime (80 percent).³³⁶ The areas most affected by corruption, according to Transparency International, were public procurement, civil service, the legislative process, and law enforcement.³³⁷

Furthermore, corruption level has been on the increase since 2004. According to the 2013 Special Barometer, as many as 95 percent of Czechs consider that corruption is a widespread phenomenon. This is one of the highest percentages in the CEE region. Moreover, 80 percent believe that corruption is the most salient challenge that the government needs to address³³⁸. Only 12 percent agree that government efforts to combat corruption are effective while 15 percent of respondents believe that there are enough successful prosecutions in the country to deter corrupt behavior.³³⁹

³³⁴ Freedom House, *Nations in Transit 2005 Report*.

³³⁵ Center for Research of Public Opinion survey cited in Freedom House, *Nations in Transit 2006 Report*.

³³⁶ Center for Research of Public Opinion survey cited in Freedom House, *Nations in Transit 2006 Report*.

³³⁷ Freedom House, *Nations in Transit 2006 Report*.

³³⁸ European Commission, *2013 Special Eurobarometer 397*

³³⁹ European Commission, *2013 Special Eurobarometer 397 and 374*.

In the National Integrity Study released in December 2011, TI indicates that the state attorney's office, the state administration, and the police remain to be "the weakest pillars in the system" to address corruption. Moreover, there is a general lack of integrity in public administration that includes corrupt behavior and low operational efficiency. Also, there is a general unwillingness across state institutions to take action against corrupt practices due to "excessive politicization"³⁴⁰ and vulnerability to political influence.³⁴¹ In this context, the Czech Security Information Service in its annual reports regularly highlights the issue of undue influence and conflicts of interest in the sectors of energy, railway infrastructure, forestry and postal services.³⁴²

The "already alarming intersection" of political and economic elite interests in the Czech Republic", according to *Nations in Transit* 2010 Report, has worsened as well. The Report also cites Transparency International to stress the "gradual 'cartelization' of the political space" in the country. The Information Service has also stated numerous times that "corrupt practices in public procurement were based on informal, clientelistic structures which could undermine the activities of public authorities."³⁴³

In this context, the European Commission has identified in its 2014 anti-corruption report several areas in need of further reform and monitoring: the use of EU funds, public procurement, integrity in public administration, financing of political

³⁴⁰ *National Integrity Study 2011*, cited in Freedom House, *Nations in Transit 2012 Report*; Also in Freedom House, *Nations in Transit 2013 Report*.

³⁴¹ Commission Staff Working Document: Assessment of the 2013 national reform program and convergence program for the Czech Republic. Brussels, 29.5.2013; SWD (2013) 353 final, 29-30, cited in European Commission, *EU Anti-Corruption Report 2014*, 5.

³⁴² Press release from January 2011, http://www.zindex.cz/data/2011-01-25-TZ_projektu_zIndex.doc, cited in European Commission, *EU Anti-Corruption Report 2014*, 7.

³⁴³ See chapter 3.2 on organised crime of the 2013 Report / Organizovaný zločin of the BIS report; <http://bis.cz/n/2013-11-07-vyrocní-zpráva-2012.html#3>; chapter 2.2 on organised crime of the 2012 Report./ Organizovaný zločin, <http://www.bis.cz/n/2012-08-22-vyrocní-zpráva-2011.html>, cited in European Commission, *EU Anti-Corruption Report 2014*, 7.

parties (reemerged as an issue in the post-accession period³⁴⁴), and prosecution of corruption. In this sense, the prosecution of large-scale corruption remains a very rare phenomenon. According to Transparency International, most prosecuted cases concern only petty corruption.³⁴⁵

HUNGARY

In international surveys of corruption, Hungary performed relatively well in the early years of transition. It registered stable estimates in the late 1990s, according to TI's Corruption Perception Index (CPI): 5.2 in 1997, 5.0 in 1998 and 5.2 in 1999 and 2000. In 2001, CPI ranked Hungary 31st out of 91 countries, portraying it as the second least corrupt country among the other CEE states included in the survey (just after Estonia).³⁴⁶

Despite having a reputation of one of the least corrupt post-communist countries in the CEE region, aggregate international estimates of control of corruption show that Hungary, in fact, experiences a general downward trend. This process started in the early 1990s and accelerated immediately after its EU entry. According to the World Bank WGI, control of corruption was in decline in the 1990s, with slight improvements registered in the EU pre-accession period, and in free fall starting 2004 (see Figure A.1). In 1995, it was registering among the best anti-corruption performance score (0.58) only after Slovenia and the Czech Republic. By 2014, it is placed the second lowest in the region (0.13) preceded only by Slovakia (0.12).

³⁴⁴ GRECO, "Evaluation Report on the Czech Republic on Transparency of party funding," Third evaluation round, 20.

³⁴⁵ Transparency International, <http://www.transparency.cz/analyza-soudnich-rozhodnuti-vydanych-letech-2010-2012-vecech/> (2011), 171.

³⁴⁶ Transparency International, *2002 Corruption Perception Index*.

In the early transition period the healthcare system, traffic police, customs, and the state administration were the institutions most associated with corruption in Hungary.³⁴⁷ Within the framework of the Global Program against Corruption, by surveying judges, mayors and business people in the period 1999-2000 Gallup polls identified the following main sources of high-level corruption in Hungary: seriously entangled business and political elite interests, weak institutions and therefore weak law enforcement, an over-bureaucratized legal system, and privatization. Closer to the EU pre-accession period, public procurement and civil service recruitment were becoming the new loci of corruption.³⁴⁸ Yet, there is little hard evidence of corrupt behavior in the executive branch.

There is however a lot of evidence portraying undue influences on behalf of the executive. For instance, the judiciary was considered to have become progressively vulnerable to the executive. One example is the appointment of Peter Polt in 2000, as Prosecutor General. He was a former FIDESZ-MPP candidate in the 1994 general elections. After his appointment, the Prosecutor's Office has issued some controversial decisions on cases of corruption that involved several government members.³⁴⁹ Another example is the fuzzy boundaries between the executive and party campaigning. In 1999 the Government established and funded a Country Image Center responsible for promoting a positive image of Hungary among its citizens. Instead, it was found to be intensively praising government activities up to the 2002 general elections.³⁵⁰ There is also little hard evidence of explicit acts of corruption among the members of parliament.

³⁴⁷ Open Society Institute, *Monitoring the EU Accession Process*.

³⁴⁸ <http://www.gallup.hu/Gallup/monitor/en/gsurveys/010120_focus.html>, (accessed August 15, 2002), cited in Open Society Institute, *Monitoring the EU Accession Process*, 240-241.

³⁴⁹ Open Society Institute, *Monitoring the EU Accession Process*.

³⁵⁰ Open Society Institute, *Monitoring the EU Accession Process*.

Corruption that involved party finances however was a frequent occurrence. One of the major corruption scandals in this regard was linked to the 1994-1998 Government.

The EU, in this context, has highlighted the prevalence of corruption as an important concern. The 1997 Opinion on Hungary's Application for Membership stated “the impact of organised crime on the state, including some corruption” represent Hungary’s main institutional problems.³⁵¹ In 1999, corruption was still acknowledged as one of the main issues the country encountered in fulfilling the Copenhagen political criteria.³⁵² Finally, in 2001 the Commission again noted its serious concern about corruption: “a continuous negative background of corruption which could undermine the trust of the citizens in the democratic institutions.”³⁵³

In this context, it is considered that since 1998 the transparency and accountability of the executive has decreased and the politicization of appointments has increased.³⁵⁴ Multiple international institutions remarked “a tendency towards closed decision-making and reluctance to countenance external monitoring or criticism.”³⁵⁵ Freedom House in this context highlighted “attempts by the executive branch of Government to limit control over its activities.”³⁵⁶

Most of the post-accession period has been plagued by the same but constantly aggravating problems that also dominated the 1990s: nontransparent political party and campaign financing, closely associated business and political ties, and favoritism in public procurement. Moreover, in its National Integrity Systems study, published in

³⁵¹ Commission, *1998 Regular Report on Hungary’s Progress towards Accession*, 9-45.

³⁵² Commission, *1999 Regular Report*, 76.

³⁵³ Commission, *2001 Regular Report*, 19.

³⁵⁴ Open Society Institute, *Monitoring the EU Accession Process*.

³⁵⁵ Open Society Institute, *Monitoring the EU Accession Process*, 255.

³⁵⁶ Freedom House, *Nations in Transit 2001 Report*.

2007, TI identified four serious drawbacks in Hungary's anticorruption legal framework: lack of safeguards for whistleblowers, inadequate and weak conflict of interest regulations, lack of transparency in recruitment at state institutions, and limitations on the availability of public interest information. The study also identifies the areas most seriously affected by corruption: party financing, public procurement, police and other law enforcement authorities.³⁵⁷ In this context, many assessment reports state that political parties and party financing is at the heart of political corruption in Hungary.

Also, the first years immediately after accession have been plagued by numerous cases of cartel activity in public procurement. Cartels were dividing the market with fixed prices to exclude competition. The public procurement process became even more affected by corruption scandals under the Fidesz government. Public funds were disproportionately redirected towards private clients friendly to Fidesz and Victor Orban, in particular. Moreover, the 2008-2014 period was characterized by a severe deterioration in control of corruption, namely because of the numerous uncovered scandals and the controversial reforms undertaken by the Fidesz government. In this context, several scandals erupted in 2010 that involved and incriminated high-ranking executives and politicians from the previous administration.³⁵⁸ Moreover, despite having the legislative framework in place, the independence of the judiciary and of control institutions was undermined by alleged political ties of top-rank officials within control institutions.³⁵⁹

³⁵⁷ Transparency International, "Corruption Risks in Hungary-National Integrity System Country Study" (Hungary 2007), http://transparency.hu/drupal/files/active/0/Hungary_NIS_final.pdf.

³⁵⁸ Freedom House, *Nations in Transit 2011 Report*.

³⁵⁹ European Commission, *EU Anti-Corruption Report 2014*.

TI in this sense concludes in its 2011 National Integrity Study, that private interest groups have captured the state,³⁶⁰ and the process continued in 2013 as well: “[t]he government and the legislature used their power to improve the positions of friends and clients in the economy and to corrupt public procurement.”³⁶¹ According to the 2013 Special Eurobarometer Survey on corruption, an alarming 89 percent of Hungarian respondents consider that corruption is widespread in their country. Moreover, only 31 percent consider that government efforts to combat corruption are effective while only 27 percent agree that there are enough successful prosecutions to deter people from corrupt practices. Finally, 51 percent consider patronage and nepotism to be a “very serious or quite serious” problem when doing business in Hungary.³⁶²

To conclude, the same issues dominate the foci of corruption throughout the transition period as well as the post-accession one: public procurement, entangled private and public interests. These have only become more serious across time. Moreover, under the two mandates of the Orban government, a concentration of executive power is very much attested by international monitoring agencies. Control of corruption is considered to be backsliding according to all international assessment estimates.

SLOVAKIA

³⁶⁰ Transparency International, *National Integrity Study 2011* (Berlin: Transparency International, 2012), http://www.transparency.hu/National_integrity_study?bind_info=page&bind_id=325.

³⁶¹ Freedom House, *Nations in Transit 2014 Report*.

³⁶² European Commission, *2013 Special Eurobarometer* 397.

Overall in the period 1996-2013, Slovakia registered a decline in its anti-corruption performance according to the World Governance Indicators. A closer look though shows significant within-case variation. From 1996 to its first year of EU membership there is salient fluctuation with a general upward trend. Starting with 2005 however, its performance is in constant decline reaching one of the lowest levels in 2013 (see Figure A.1).

In its early transition period, Slovakia started its anti-corruption endeavors from a relatively low estimate level (0.36) in comparison to its CEE neighboring countries.³⁶³ Only the Baltic countries had a lower estimate of control of corruption in 1996, according to the WGI indicators. Until 2002 however, its indicator slipped even more, to -0.10, the lowest performance level in the region for that year.³⁶⁴ The next two years however are marked by a steep recovery in its anti-corruption performance, and Slovakia registered a level approximate to the one it started back in 1996 (0.39).

Up to the pre-accession period corruption represented a serious problem in Slovakia for most state institutions. Despite limited hard evidence of corrupt MPs behavior, there was considerable evidence of “undesirably close ties” between highly-ranked public officials and business interests. The key sectors of public service (health service and education, in particular) represent the foci of corruption identified in the progress reports of the European Commission but also in the various pre-accession assessment reports on corruption and public opinion polls. Moreover, the licensing process was also severely affected by bribery. Some measures to increase transparency were adopted but no fundamental reforms were pushed through to address non-

³⁶³ World Bank, *World Governance Indicators* 1996.

³⁶⁴ World Bank, *World Governance Indicators* 2002.

transparent licensing procedures that would help contain corrupt practices. Other key sectors ranked in public surveys among the most corrupt institutions in the 1990s were the judiciary, police, and customs offices. Political party funding was also a key area where corruption represented a serious problem.

All evidence up until 2002 signals that corruption was one of the most significant problems Slovakia faced in its early democratization period. Concerns of corruption practices in the allocation of licenses to private broadcasting companies persisted. Moreover, inadequate regulations of public broadcasting allowed political interference in the activities of Slovak Television. Despite some convictions for corruption-related offences, the general public perception showed stagnant or worsening levels of corruption. Same public surveys indicated that corruption was culturally widely tolerated by all segments of society. Public functionaries would not inform on their colleagues if they found out they had accepted bribes.³⁶⁵ Moreover, bribery among citizens especially in health and education was widely accepted. This increased level of tolerance towards corruption practices is likely to make any efforts to combat the phenomenon ineffective.³⁶⁶

Starting with 2002, the police pursued relatively more cases of corruption . 58 cases of bribing state functionaries were registered in the first half of the year alone, according to the Ministry of the Interior. In about 2/3 of the cases the person offering the bribe was detained. By the end of 2002, Slovak law enforcement authorities prosecuted “120 persons for corruption-related criminal offenses and 57 of them have been

³⁶⁵ Open Society Institute, *Monitoring the EU Accession Process*.

³⁶⁶ Open Society Institute, *Monitoring the EU Accession Process*.

convicted.”³⁶⁷ Generally however, the police was “after the low-level suspects rather than the public officials behind the most notorious and politically sensitive cases.”³⁶⁸ Despite the numerous changes introduced in the anticorruption legislation, the majority of Slovak citizens still considered that corruption and clientelism were among the most pressing social problems in Slovakia on the eve of EU accession.³⁶⁹

Since it reached its peak in anti-corruption performance in 2004 (0.49, 2005 estimate), Slovakia is in a constant backslide, at least according to statistical indicators³⁷⁰. In 2013, it reached the lowest level of anticorruption performance since 2002 (0.06). In this sense we see a 0.43 estimate change in the period 2005-2013, one of the most serious backslides in the region in control of corruption.

In the most recent Anti-Corruption Report, the EC repetitively brings in focus challenges regarding the independence of the judiciary, the prosecution of corruption, transparency of party financing, the (mis)use of EU funds, and public procurement. According to the most recent 2015 Nations in Transit Report published by Freedom House, cronyism, nontransparent, clientelist and corrupt practices still persist in the public sphere “resulting in no notable prosecution of high-level offenders.”³⁷¹ Also,

“[t]he judiciary continues to struggle with independence and efficiency, but the ousting of Štefan Harabín as the head of the Supreme Court and the Judicial Council is, at minimum, a symbolic victory for reformers who are working to purge the judiciary of politically motivated actors. Further reforms are, however, still necessary.”³⁷²

³⁶⁷ Freedom House, *Nations in Transit 2003 Report*.

³⁶⁸ Freedom House, *Nations in Transit 2003 Report*.

³⁶⁹ Freedom House, *Nations in Transit 2005 Report*.

³⁷⁰ World Bank, *World Governance Indicators*, Slovakia.

³⁷¹ Freedom House, *Nations in Transit 2015 Report*, <https://freedomhouse.org/report/nations-transit/2015/slovakia>

³⁷² Freedom House, *Nations in Transit 2015 Report*.

Greater accountability for high-level corruption in this sense is much awaited. Transparency International Slovakia however improves Slovakia's position in the Corruption Index ranking for 2014 mainly due to the newly adopted law protecting whistleblowers, the law on the formation of political parties, and the proposed e-marketplace for public procurement bids pending of course on their successful implementation³⁷³.

Yet, public opinion still considers corruption to be one of the most stringent problems in Slovakia. According to the most recent 2013 Special Eurobarometer, 90 percent of the Slovak population consider that corruption is widespread. That is 14 percent above the EU average. Only 21 percent of the respondents agree that government efforts to combat corruption are effective. Also, only 21 percent consider that there are enough successful prosecutions in Slovakia to deter people from corrupt practices³⁷⁴. Finally, Slovakia was ranked 47th in 2013 and 54th in 2014 according to the Transparency International Corruption Perception Index (2014) – the lowest rank among the CEE states that joined the EU in the 2004 enlargement wave³⁷⁵.

According to a 2014 study undertaken by Transparency International Slovakia,

“about 48 percent of all bribery cases that make it to court concern alleged bribes under €20. Bribes greater than €100 account for just one-quarter of all cases assessed by courts. Though accusations abounded, only 5 percent of court cases in 2014 dealt with serious corruption related to public tenders, European funds, or elections.”³⁷⁶

³⁷³ Transparency International, *Corruption Perceptions Index 2014*, Berlin: Transparency International 2014), http://www.transparency.org/country#SVK_DataResearch_SurveysIndices.

³⁷⁴ European Commission, *2013 Special Eurobarometer* 397.

³⁷⁵ TI, *Corruption Perception Index 2014*, www.transparency.org/cpi2014/infographic/regional/european-union-and-western-europe.

³⁷⁶ “TIS: Bribery Going Unpunished,” *The Slovak Spectator*, 18 August 2014, <http://spectator.sme.sk/articles/view/54966>.

To conclude, Slovakia's foci of corruption before accession were few but raising serious concerns: public administration, the legislature, and the judiciary were the main ones. There is no hard evidence of corrupt behavior in these institutions, however, especially in the 1990s. Party financing and public procurement were also environments where corrupt practices flourished. More generally, corruption was considered one of the most important problems for the country to join the EU. Despite the reforms adopted, these spheres continued to stay at the heart of political corruption after accession as well. Moreover, new areas became affected by consistent corrupt practices after accession: law enforcement agencies, and prosecution, in particular.

Conclusion of the Longitudinal Analysis:

Areas most affected by corruption before and after accession

Within-case analysis findings

Identifying the main foci of corruption and how they have shifted throughout the last two and a half decades has not been an easy endeavor. As noticed from the various reports analyzed in this chapter, foci of corruption vary to different degrees depending on the source of survey, assessment report, or analysis that is considered, fact that makes identifying the degree and depth of concern of the foci a complex endeavor. The foci of

corruption have been compared in this study between two periods: before and after accession for each individual case. Below we summarize the findings.³⁷⁷

Estonia's foci of corruption look very differently between the two periods. If before accession, law enforcement agencies, anti-corruption institutions, and the public procurement process were greatly affected by corrupt behavior, after accession it is the unregulated lobbying in the legislature that raises salient concerns. Moreover, local public administration and party financing were continuously considered foci of corruption throughout the last two and a half decades.

Before accession corruption in Poland was a salient concern. The main areas affected were the off-budget agencies, political parties, public administration, the judiciary, prosecution, and public procurement. As a result of the adopted reforms, Poland addressed numerous institutional caveats and as a result closed off salient foci. Yet, few remain that make off-budget agencies, party financing, and procurement still greatly affected by corruption.

Latvia, as we show in following chapters, is one of the countries that implemented most reforms in the last decade, and has addressed many caveats in its institutional design. If political parties, public administration, the judiciary, off-budget agencies, the parliament, anti-corruption agencies, and the procurement process were all greatly affected by corrupt practices before accession, then it is only the parliament that is are highly affected by illegal lobbying after accession. The higher echelons of public administration are also an important locus of corruption that was not solved via reform. The problem of state capture in this sense has never been addressed by any reforms in the last two decades, and represents the main issue affecting anti-corruption performance.

³⁷⁷ See summary of findings in Table E.1.

Furthermore, political parties, law enforcement agencies, public administration, the parliament, and procurement were the main loci of corruption in Lithuania before accession. The country has passed numerous reforms that addressed partly some of the issues. In this sense, party financing, public administration, and anti-corruption institutions stopped being an issue after accession, yet all others remained on the list. Moreover, local governments also emerged as a salient concern for corrupt behavior after accession.

Slovenia's socioeconomic and political transformations in the early 1990s ensured that corruption did not represent a problem for its EU accession process. Yet, clientelist networks, weak law enforcement agencies, corrupt local governments, prosecution, and a non-transparent procurement process were considered vulnerable spheres for corrupt practices to thrive. Important post-accession reforms ensured a transparent procurement process to be put in place, and emulated by other countries as well. All other issues remained salient after accession as well. Moreover, new spheres became vulnerable and affected by corruption, and namely state-owned companies, and political party financing.

Public administration, law enforcement, elected officials, judges, and financing of political parties, were identified as Czech Republic's main foci of corruption before accession. Public procurement was also considered a heavily corrupt sphere. After accession, public administration and financing of political parties remained important sources of political corruption. The public procurement process is still plagued by corrupt practices as well. Concerns have also remained about the independence of prosecution in investigating corruption particularly in the higher echelons of power.

In the case of Hungary, political parties, public administration, law enforcement, and public procurement were constantly considered greatly affected by corruption. The undertaken reforms in these areas did not ensure significant progress in the control of corruption to be observed after accession. Moreover, new areas such as law enforcement, the judiciary, and the legislature were proven affected by corruption as well.

Finally, Slovakia's foci of corruption before accession were raising serious concerns: public administration, legislature, judiciary, public procurement and party financing. More generally, corruption was considered one of the most important problems for the country to join the EU. Despite the reforms adopted, these spheres continued to stay at the heart of political corruption after accession as well. Moreover, new areas became affected by consistent corrupt practices after accession: law enforcement agencies, and prosecution.

This chapter finds evidence that the frontrunners have addressed more foci of corruption from the period before accession than the backsliders. They also display fewer foci of corruption after accession than the backsliders. The middle group countries display overall fewer foci of corruption than the backsliders but more than the frontrunners.

Cross-case comparative findings

Taking a regional aggregated look at the foci of corruption, public procurement, party financing, public administration, the legislature, and law enforcement were identified as the main spheres affected by corruption until candidate countries joined the

EU (see Figure E.2).³⁷⁸ The analysis suggests that the situation did not change drastically after accession since the same areas were still the most affected ones. Moreover, the frontrunners as a group have the political party financing system as a common locus of corruption after accession that has been left previously unaddressed. The middle group cases have all in common the legislative process as the locus of corruption that has been left previously unreformed. Finally, the backsliders have the public administration, the legislature, the judiciary, prosecution, and public procurement as spheres affected by corrupt practices.

Public procurement is especially affected by corruption in most states under study (with the only exception of Slovenia and Latvia), and therefore deserves a closer look. Despite having advanced legal frameworks regulating the procurement process (EST, LIT, SLO), it is one of the spheres that is most affected by corruption in the entire CEE region. The main issues of concern relate to the lack of enforcement of sanctions (HU, LAT, SLO), the weakness or lack of sanctions altogether (EST, LAT, LIT, PL), and the ineffectiveness of oversight and monitoring mechanisms (LAT, LIT, POL, SK, SLO). In the Czech Republic and Hungary the public procurement process is based on clientelist structures, situation that has aggravated after accession, in particular. Slovenia, unlike all other cases, has in place the best monitoring system that was also awarded the UN Public Service Award in 2013. Yet, it struggles with enforcement of public procurement regulations as well as low effectiveness of existing control mechanisms.

The *legislative process* is another sphere very much affected by non-transparent, and possibly corrupt lobbying practices across most of the cases. We find evidence, in this sense, of very closely interconnected ties and informal networks established between

³⁷⁸ Identified as a regional focus of corruption if at least four of the cases experienced it as a serious issue.

political and economic elites. In some cases such as Slovakia the business elites are also the political ones. The legislature is also an area that has been the least reformed before accession, and until today has very poor practices of regulated and transparent lobbying across most of the states in the CEE region.

6

Assessing Frontrunners' Anti-Corruption Designs

In this chapter we turn to the empirical analysis of institutional anti-corruption designs among the frontrunners as a first step into testing the first hypothesis. This chapter finds evidence that shows that both Estonia and Poland have established strong institutional designs by addressing existing 'loopholes' in their anti-corruption mechanisms. Corruption does not represent a salient problem for either of the two cases today. Both states yet experience a small number of foci of corruption after accession. Estonia experiences corruption mainly in party financing and local public administration. Poland struggles with corruption namely in party financing, public procurement, and state-owned companies. Evidence shows that the remaining foci of corruption are due to deficient internal control mechanisms in these spheres that were left poorly reformed from before EU accession.

6.1. ESTONIA

Together with its Baltic neighbors, Estonia began its transformation process with one of the worst control of corruption indices in the CEE region, -0.06.³⁷⁹ In a matter of only two years, its score improved up to 0.57, in 1998, the most radical increase in the region. Since then it continued to register steady reform progress and improve its anti-corruption performance. In 2004 Estonia was registering the second highest anti-

³⁷⁹ World Bank, *World Governance Indicators* 1996.

corruption regional score following only Slovenia. It became the leader in control of corruption in 2013. As per international standards, the corruption level in Estonia is generally considered low.³⁸⁰ The evidence drawn from the below within-case analysis suggests that the reforms Estonia adopted led to the strengthening of its overall institutional anti-corruption design, which is currently less conducive to corrupt practices than it was the case in the 1990s. A lot of the institutional loopholes of the 1990s were addressed via continuous reforms, fact that explains the country's improving anti-corruption performance.

Early transition period (1990s-2001)

Estonia is considered today the least corrupt country of the 2004 EU enlargement wave candidate countries from the CEE region.³⁸¹ It experienced the fastest anti-corruption progress during its early transition period due to the advanced and comprehensive legal framework it adopted and the positive results that it triggered. It was one of the first in the CEE region to ratify the Council of Europe Civil Law Convention on Corruption, and one of the first to adopt in 1995 an explicit Anti-Corruption Act. The Act laid down the legal framework for the prevention and prosecution of corruption, definitions of a public official and corruption, detailed provisions on conflicts of interest and asset declarations. The Act provisions cover all elected and appointed officials. It

³⁸⁰ European Commission, *Anti-Corruption Report 2014*.

³⁸¹ Open Society Institute, *Monitoring the EU Accession Process*.

also established a parliamentary anti-corruption committee (PACC) as the main body responsible for monitoring compliance with the Act among MPs.³⁸²

Moreover, Estonia was the only country in the CEE region to separately demarcate corruption as a criminal offence under its Criminal Code. The Act defined corruption as “the use of official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts, or fails to make lawful decisions or perform such acts.”³⁸³ To prevent conflict of interest, it also restricted employment, and certain types of activities for officials during their terms in office. Failure to notify about situations of conflict of interest was subject to a fine or up to one-year imprisonment. Moreover, the Penal Code criminalized the giving, request and acceptance of bribes and also gratuities by or to a variety of persons.³⁸⁴ Bribery legislation also covers foreign officials. In case of bribery, penalties range from a fine to ten-years imprisonment. Elected and appointed officials have to submit yearly declarations of economic interests that should contain extensive information on assets and income. Declarations of high-level officials are submitted to PACC and published in the *State Gazette*. Failure to submit asset declarations or the submission of incomplete ones represents a criminal offence.

We do notice, in this regard, the adoption of numerous bold anti-corruption mechanisms in the early transformation years by the Estonian authorities. According to Estonian experts, the process began in the mid-1990s when corruption started to be finally perceived both by society and politicians as a problem that needed to be

³⁸² Open Society Institute, *Monitoring the EU Accession Process*.

³⁸³ Anti-Corruption Act, *State Gazette* I/1999, 16, Chapter 1, Article 5 (1).

³⁸⁴ Criminal Code, Chapter 8, sections 164-165.

addressed.³⁸⁵ This was not a priority for the policy-makers in the early 1990s. Yet, the adopted legislation embedded certain institutional weaknesses. According to GRECO's assessment, the monitoring of conflicts of interest and oversight over asset declarations lacked efficiency in the 1990s. In this regard, PACC was criticized for lacking methodology and means to check the veracity of declarations, and capacity to disclose cases of corruption.³⁸⁶ Moreover, assessments expressed concern about the overall effectiveness of enforcement and implementation of the Act.³⁸⁷ Another criticism of the early transition anti-corruption endeavors was the lack of a unified anti-corruption program. State institutions were following separate specific anti-corruption strategies in this regard. As a response to GRECO's criticisms however, an expert committee was formed shortly after to draft a National Anti-Corruption Strategy that was later adopted in the EU pre-accession period.

The early institutional framework to fight corruption had the Security Police Board as the only specialized agency in anti-corruption. It was managing the implementation of the anti-corruption measures of the government's anti-crime policy. Functionally, the security police is independent from the main police force. The second agency that played a role in combatting corruption is the Financial Intelligence Service established in 1999 to combat money laundering. The Money Laundering Prevention Act passed in 1999 declares money laundering a criminal offence. Considering their limited competencies, it is considered that both the security police and the Financial Intelligence Service were still effectively carrying out their responsibilities.³⁸⁸ Yet, pretrial

³⁸⁵ Anonymous (expert), interviewed by author, Tallinn, October 2016.

³⁸⁶ GRECO, *Evaluation Report on Estonia*, 2001, 15.

³⁸⁷ Open Society Institute, *Monitoring the EU Accession Process*.

³⁸⁸ Open Society Institute, *Monitoring the EU Accession Process*.

investigations of corruption involving local administration authorities fall under the competence of local police, and are considered “less stringently pursued.”³⁸⁹ Local governments, in this context, represented the epicenter of corruption in Estonia. Strong local connections between economic interests and local administration represented frequent encounters. While gaining wider autonomy, governments also became increasingly less subject to external supervision and poorer control.

Since the 1990s Estonia set up an advanced legal framework that coordinated behavior in public administration institutions. The 1995 Public Service Act regulates in this regard integrity issues of public servants. Middle and lower-level government officials, executive officers and advisers have to be recruited via a transparent merit-based competition process. Individuals with previous corruption-related records cannot be employed. A Public Service Code of Ethics was also adopted in 1995. Yet, due to its brief and vague nature its effectiveness was not clear. Corruption in this period was considered to be a relatively minor problem among senior officials and politicians more generally.³⁹⁰ Also, there was almost no evidence of corruption among executive officials, civil servants, in the court system or among prosecutors. Moreover, it was considered that “corruption control mechanisms work relatively well at the highest level.”³⁹¹ According to the 2000 Regular Report of the Commission, “Estonia’s civil servants continue to perform their tasks in an impartial and politically neutral way.”³⁹²

Members of Parliament enjoyed immunity, and criminal charges could be brought only on the proposal of the Legal Chancellor and approval of parliament’s majority. In

³⁸⁹ Freedom House, *Nations in Transit 2003 Report*.

³⁹⁰ Open Society Institute, *Monitoring the EU Accession Process*.

³⁹¹ Open Society Institute, *Monitoring the EU Accession Process*, 193.

³⁹² European Commission, *2000 Regular Report*, 14.

this regard, there was no evidence of corruption of MPs in the early 1990s either. Also, the World Bank/EBRD 1999 survey concluded that Estonia was among the EU candidate countries least impacted by the sale of parliamentary votes.³⁹³ Yet, there was evidence of existing connections between business and political interests. Moreover, the parliament's PACC was severely criticized in this report as well for not being effective at scrutinizing conflict of interest and asset declarations submitted by high-profile officials.³⁹⁴ Also, the lack of cooperation between the Parliament and the State Audit Office (SAO) undermined the effectiveness of audit of public expenditures.

Until the introduction of regulations on political party funding in 1999, the situation was “a complete mess.”³⁹⁵ As a result of deficient regulatory framework, corruption in party financing represented a salient concern.³⁹⁶ There were no requirements to publish or declare party's accounts, and there were no limits to how much a company could contribute to a political party. Corruption in party financing, in this context, was assessed to be a salient concern.³⁹⁷ The 1999 amendments introduced a ban on anonymous and third party donations, the requirement to publish complete accounts, and limitations on the type of entities that can donate funds. State subsidies for parties that receive more than five percent of the votes in national elections were also introduced. Yet, there were no restrictions stipulated on party expenditures. Neither were there provisions regarding oversight or audit of political party accounts, nor any sanctions for infringing the law. In this sense, despite significant improvements brought to the legal

³⁹³ World Bank, *BEEPS*.

³⁹⁴ Open Society Institute, *Monitoring the EU Accession Process*, Freedom House, *Nations in Transit 2003 Report*.

³⁹⁵ Daimar Liiv (Praxis Centre for Policy Studies), *Open Society Institute*, March 13, 2002, cited in “Monitoring the EU Accession Process,” *Open Society Institute*, 220.

³⁹⁶ World Bank, *BEEPS*.

³⁹⁷ World Bank, *BEEPS*.

framework regulating party financing, there were still certain loopholes left in place that created easy alleys for avoiding the law.³⁹⁸

Pre-accession period – the Estonian anti-corruption agenda (2001-2004)

During the EU pre-accession period, the Estonian government has passed important anti-corruption legislation to increase transparency of public institutions and accountability of government officials. It also addressed some of the pre-existing loopholes that allowed for corrupt behavior previously to persist, yet not in all areas. In this context of undertaken reforms, the European Commission has not identified corruption to be a problem for Estonia in its European integration process. Anti-corruption policy did not represent an element of the Accession Partnership measures in this respect either. The partnership agreement only drew attention to the need to enforce compliance with anti-corruption regulations at the local government level.³⁹⁹ It also supported joint training programs in the period 1999-2002 to improve enforcement capacity of state institutions to fight economic crime and corruption. In this sense, the EU accession process of Estonia played a less significant role for shaping its anti-corruption policy in comparison to its Baltic neighbors.⁴⁰⁰

Moreover, Estonia ratified three Council of Europe conventions during pre-accession. It also became a member in several international anti-corruption networks such as GRECO, the Baltic Anti-Corruption Initiative, and the OECD Anticorruption

³⁹⁸ Open Society Institute, *Monitoring the EU Accession Process*.

³⁹⁹ European Commission, *2001 Regular Report*, 19.

⁴⁰⁰ Open Society Institute, *Monitoring the EU Accession Process*.

Network.⁴⁰¹ Domestically, the implementation of the National Strategy for Crime Prevention for 2000-2003 included some anti-corruption measures, and fell under the responsibility of the state police. Measures included establishing internal control mechanisms in government agencies, improving the law enforcement system, preventing corruption in public procurement, and exposing money-laundering schemes. In this context, the Penal Code was completely revised in 2002. Together with subsequent amendments it ensures a comparatively rigorous foundation for the criminalization of cases of corruption.⁴⁰² The most salient reforms were passed in the field of state financial control, making it completely in tune with the EU requirements. In 2000, the government passed amendments to the Government of the Republic Act to require the setup of a three-tier system of control and audit. The main institutions in this framework are the State Audit Office, the Financial Control Department of the Ministry of Finance, and internal financial control and audit bodies.⁴⁰³

The State Audit Office (SAO), established in 1990, still represents the main auditing entity for the public sector. It enjoys a wide spectrum of competences, such as the auditing of all public expenditures and revenues, and control of public procurement's compliance with the law. It is not under SAO's competence however to audit local governments. The State Audit Act was amended in 2002 to make its recommendations for corrective measures in audited entities subject to mandatory review. According to SAO, "the Office follows up to check implementation of its recommendations after one month and six months, and if audit findings were very serious, repeats the audit a year

⁴⁰¹ Freedom House, *Nations in Transit 2003 Report*.

⁴⁰² European Commission, *Anti-Corruption Report 2014*.

⁴⁰³ Open Society Institute, *Monitoring the EU Accession Process*.

later.”⁴⁰⁴ SAO also submits its assessment of the state budget implementation and draft state budget to the Parliament. If until the new Act there were no formal mechanisms for dealing with these assessments, then after the new amendments came into force, SAO submits its reports to the Parliamentary Finance Committee, the supervising body for the SAO activities. Audit reports are also made publically available on SAO’s website.⁴⁰⁵

SAO’s anti-corruption role and activity was however criticized by GRECO on the eve of EU accession. In this sense, despite adequate budget and human resources, SAO took a passive stand regarding its anti-corruption role. GRECO highlighted that the agency worked mainly with data provided by internal control bodies of audited institutions, structures that were only recently set up, without taking an active role itself in the fight against corruption. Moreover, the fact that it still cannot audit local government activity is a serious concern as well. According to GRECO,

“Neither the activities of the Financial Inspectorate [Financial Control Department of the Ministry of Finance] nor those of the SAO are likely to lead to repressive measures for misuse of public funds as none of these bodies considers itself responsible for initiating financial investigations.”⁴⁰⁶

The only supervision of local officials comes from the audit commissions of local councils, “which have neither the expertise nor the incentive to pursue local corruption.”⁴⁰⁷ This lacuna in supervision and monitoring of local authorities serves as piece of evidence why there is more corrupt behavior at local rather than central level administration.

Furthermore, new amendments to the Act on the State Audit Office clearly stipulate that forwarding information on legal infringements to enforcement authorities

⁴⁰⁴ Open Society Institute, *Monitoring the EU Accession Process*, 208.

⁴⁰⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁰⁶ GRECO, *Evaluation Report on Estonia*, 29.

⁴⁰⁷ Freedom House, *Nations in Transit 2005 Report*.

falls under the jurisdiction and responsibility of SAO. Furthermore, the 2000 amendments require the heads of government and state institutions to set up internal audit and control structures and measures in all agencies. The process was completed during the pre-accession period though did not become fully functional. The supervision and auditing mechanisms put in place concerning corruption did not appear to be effective, at local government level in particular, on the eve of EU accession.⁴⁰⁸ This lack of effective oversight maintains local governments as the central focus of corruption in Estonia. According to security police data, most of the cases of corruption that were brought to court in 2000 were the effect of weak internal control mechanisms in governmental entities.⁴⁰⁹ This new system was expected hence to cover the pre-existing loopholes from the 1990s.

An important reform passed also during the EU pre-accession period was the adoption of the Act on Public Information in 2000. The law promotes transparency of public sector information by requiring state and municipal institutions to publish their activities and data on their website as well as in a digital document register. The Act clearly stipulates the types of information that need to be made public. This includes amongst other draft legal acts and regulations, as well as assets and budget funds that are transferred to legal entities, established by central or local public administration authorities. Also, the wages of top-ranked civil servants and members of state-owned enterprises have to be publically available. It is the Data Protection Inspectorate that is tasked with the supervision of Act compliance.⁴¹⁰

The public procurement process was an area particularly prone to corruption in

⁴⁰⁸ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁰⁹ GRECO, *Evaluation Report on Estonia*, 7.

⁴¹⁰ Open Society Institute, *Monitoring the EU Accession Process*.

Estonia in the 1990s.⁴¹¹ Important changes were introduced to the Public Procurement Act in 2001. These were driven by the need to harmonize the law with EU directives. In this regard, SAO is empowered to audit post-hoc public procurements but not compliance to procedures. Tender announcements and contract decisions are recorded in the online state procurement register, but also publicized in the press in case of significant contracts.

Evidence shows that during pre-accession Estonia introduced numerous improvements to its anti-corruption mechanisms thus strengthening institutions to address cases of corruption. The compliance of political parties with funding regulations is an area of concern that remained unaddressed during pre-accession.⁴¹² While local administration also remained an area of concern, new regulations addressing public procurement were adopted amongst other aforementioned initiatives, hence eliminating some of the pre-existing institutional loopholes. In this period, Estonia overall strengthened its institutions addressing corrupt practices hence improving its anti-corruption performance significantly. It upheld its reputation as one of the least corrupt countries in Eastern Europe and the former Soviet Union.⁴¹³

Post-accession anti-corruption developments

In 2004, Estonia undertook for the first time a long-term strategic planning approach to tackle corruption. The two strategies developed in this context, for 2008-2012, and 2013-2020 focus mostly on prevention and education rather than sanctioning.

⁴¹¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁴¹² Freedom House, *Nations in Transit 2004-2005 Reports*.

⁴¹³ Freedom House, *Nations in Transit 2003-2005 Reports*.

Issues to be addressed through specific working plans and measurable indicators include integrity of elected and appointed officials, parliamentary immunity, political party funding reform, and lobbying.⁴¹⁴ The latter two constitute foci of corruption as identified by international assessment reports. The 2013-2020 strategy, according to Freedom House, “emphasizes transparency in public sector decision making as critical to reducing opportunities for graft and includes clear plans for an impact assessment at the end of implementation period.”⁴¹⁵

After accession Estonia developed a comprehensive legal framework for regulating party financing to address previous institutional loopholes. In this context, starting 2003, the Estonian government banned all political donations except those from natural persons. Also, in line with the amendments to the Political Parties Act that came into force in 2011, a Supervisory Committee on Political Party Funding was established, following GRECO recommendations.⁴¹⁶ A wide pool of institutions appoints the seven-member committee for a five-year term. Moreover, parties have to report on their interactions with related entities such as foundations, trade unions, and interest groups. Additional amendments toughen the obligation for parties and candidates to make their financial reports public, and return illegal donations.⁴¹⁷ In 2013, the Committee launched an electronic accounting register for campaign expenditure reporting. Through further amendments in 2014 to the Political Parties Act, it enlarged the scope of financial data to be included in the register. It also stipulates limits on the indebtedness of political parties, restricts even further cash donations, and increases the penalties for accepting illegal

⁴¹⁴ European Commission, *Anti-Corruption Report 2014*.

⁴¹⁵ Freedom House, *Nations in Transit 2014 Report*.

⁴¹⁶ European Commission, *Anti-Corruption Report 2014*.

⁴¹⁷ European Commission, *Anti-Corruption Report 2014*.

donations. The enactment of this new legislation comes as a result of increasing evidence of domestic and international influence peddling in domestic politics, and exploitation of existing loopholes in party financing by political parties.⁴¹⁸

The 2012 amendments to the Anti-Corruption Act introduced further improvements. A register of declarations of interest for public officials that became effective in 2014, and more sanctions for party financing infringements were introduced. According to Freedom House, “[t]he register has become a tool that enhances transparency, as it shines light on potential conflicts of interest and works as a preventive anticorruption measure.”⁴¹⁹

At the same time, several provisions have weakened existing legislation. The acceptance of illegal donations was decriminalized in 2011. The Supervisory Committee on Party Funding became the main body to monitor adherence to the Political Parties Act and investigate law violations but was not equipped accordingly either administratively or analytically to deliver on its new responsibilities. According to the European Commission, “[w]hile the Supervisory Committee has access to Parliament’s administrative resources, additional reallocation and prioritisation may be necessary to enable effective scrutiny of campaign finance and donations.”⁴²⁰ Freedom House, in this respect, brings attention to some serious allegations of money laundering within Estonia’s main political parties taking place in 2013.⁴²¹

The institutional framework for coordinating and implementing anti-corruption policy has somewhat changed after accession. The Ministry of Justice became the main

⁴¹⁸ Freedom House, *Nations in Transit 2006-2013 Reports*.

⁴¹⁹ Freedom House, *Nations in Transit 2015 Report*.

⁴²⁰ European Commission, *Anti-Corruption Report 2014*, 6.

⁴²¹ Freedom House, *Nations in Transit 2014 Report*.

body that manages the anti-corruption policy, collects necessary data for investigations, carries out training and impact assessment. Law enforcement stays with the Internal Security Service, and the Police and Border Guard. Moreover, the Ministry of Finance coordinates trainings on integrity and ethics. Four different parliamentary committees work on legislative drafting, proceedings, and implementation of the Anti-Corruption Act.⁴²²

Estonia also put in place the framework for a transparent decision-making process. At the commencement of a legislative process, the Parliament publishes on its website the bill, the suggested amendments with all complementary materials, and all parties concerned can submit their comments to the committee in question. Public consultations are held via an electronic database, which also serves as a repository. Agencies are obliged to justify their acceptance or decline of proposed amendments. Yet, there is no code of conduct for members of parliament yet that raises some concerns of integrity, according to GRECO.⁴²³

Despite the passage of multiple reforms after accession, several institutional weaknesses that were left unaddressed before accession still persist. As a result of the changes to the Penal Code, legislation does not include offering a bribe or intermediaries requesting a bribe or undue advantage any longer. Moreover, there is no specific law on the protection of whistleblowers. The Anti-Corruption Act is the only document that requires state institutions to protect the confidentiality of whistleblowers. Furthermore, despite several attempts at drafting lobbying legislation, there is no enacted regulation so far. This represents a significant loophole considering the growing influence-peddling in

⁴²² European Commission, *Anti-Corruption Report 2014*.

⁴²³ Freedom House, *Nations in Transit 2013 Report*.

Estonian politics.⁴²⁴

Moreover, a 2013 GRECO report highlights more weaknesses in the corruption prevention system, and the application of the law. The report notes,

“the existence of corruption among members of parliament, judges, and prosecutors, pointing to insufficient application of conflict-of-interest rules for members of parliament (MPs); an absence or insufficient definition of ethical principles and rules of conduct for MPs; and a lack of practical guidance regarding the acceptance of gifts associated with official duties.”⁴²⁵

The politicization of public service also arose as a more recent concern. A controversy in the appointment of the head of the police and border guard board in 2013 triggered the amendment of the Public Service Act that mandated open competitions with independent selection committees upon hiring. It also defines in a narrower manner the public servant, and stipulates new rules for ensuring a transparent and competitive remuneration system. The wages of all civil servants are now available online. Also, all civil servants (not just the highly-ranked or those involved in public procurement, as it used to be the case) have to yearly disclose their assets and income.⁴²⁶ Yet, accountability at state-owned companies and their suspected misuse of funds as a way to trade in influence or compensate political party donors still remains a concern. According to Transparency International (TI), “there is limited information on transactions, appointments and potential conflicts of interest at state-owned companies.”⁴²⁷

Major progress took place in the area of public procurement. Estonia has a highly developed electronic system for e-procurement but also state e-services that facilitate transparency. Since 2013, a new electronic application makes the financial data of local

⁴²⁴ Freedom House, *Nations in Transit 2013 Report*.

⁴²⁵ Freedom House, *Nations in Transit 2014 Report*.

⁴²⁶ Freedom House, *Nations in Transit 2014 Report*.

⁴²⁷ European Commission, *Anti-Corruption Report 2014*, 9.

public administration authorities public.⁴²⁸ More generally, since 2003 all tenders are published online in the State Public Procurement Register (SPPR). The Public Procurement Act aims hence at a fully electronic tendering process in the future. Yet, in spite of having an e-procurement system, “corruption risks remain, involving possible hidden agreements between politicians, officials and entrepreneurs.”⁴²⁹ The more sensitive cases include urban planning and construction, healthcare, and licensing. The administrative penalties imposed in case of infringements are insignificant and therefore raise concerns regarding their dissuasiveness. Furthermore, TI concluded in 2013 that corruption persists also in the system of distributing EU funds. Infringements in this area “illustrate overall vulnerabilities in the management of EU funds and, more broadly, weaknesses in the public procurement system.”⁴³⁰

As the above analysis shows, numerous legal loopholes were addressed during pre- and post-accession periods. Yet, the European Commission draws attention to the need for further reform in improving political party financing legislation through more effective monitoring of donations, applying dissuasive sanctions in case of infringements, improving oversight of public procurement, “[d]eveloping guidelines on monitoring compliance with anti-corruption requirements at local government level”, and implementing a code of conduct for MPs “accompanied by an efficient mechanism of supervision and sanction and ensuring effective scrutiny of economic interest declarations.”⁴³¹

⁴²⁸ www.riigipilv.ee.

⁴²⁹ European Commission, *Anti-Corruption Report 2014*, 7.

⁴³⁰ European Commission, *Anti-Corruption Report 2014*, 8.

⁴³¹ European Commission, *Anti-Corruption Report 2014*, 10.

Despite the aforementioned recommendations, Estonia has some of the most advanced institutions that help it prevent corrupt practices. These have been achieved by addressing corruption in most spheres where it was flourishing, and by eliminating loopholes that facilitated rent-seeking behavior. In this context, Estonia has continued to distinguish itself in the CEE region with very high anti-corruption performance. It enjoys the reputation of the least corrupt country in Eastern Europe and in the former Soviet space since 2011 when it replaced Slovenia as regional leader in anti-corruption performance. According to the 2013 Eurobarometer on corruption, 65 percent of the population thinks corruption is widespread.⁴³² That makes it the country with the lowest estimate in the region, and 11 percent below the EU average. It is doing better than some of the older member states as well (Austria, Belgium, and France). Moreover, 30 percent of respondents think that the Estonian government efforts to combat corruption are effective, which places it 7 percent above the EU average. 39 percent of Estonians consider that there are enough successful prosecutions in the country to deter people from corrupt behavior, 13 percent above the EU average, and only 11 percent below the EU maximum. According to TI's Corruption Perception Index (2014), Estonia is on the 25th place out of 175.⁴³³

In light of the evidence discussed above, we notice that the weaknesses in institutional designs closely correspond to the foci of corruption identified by domestic and international actors. Hence we see areas such as party financing that institutionally were either not at all or poorly regulated representing also the areas most affected by

⁴³² European Commission, *2013 Special Eurobarometer 397*.

⁴³³ Transparency International, *2014 Corruption Perception Index*.

corruption. There is no legislation as of now regulating lobbying, and we do find evidence that suggests this area might become of more salient concern in the near future. In this context, widely broadcasted scandals of money laundering that involved Estonia's key political parties in the last couple of years have shadowed its leading role as one of the least corrupt countries in the EU as a whole.⁴³⁴

We also find evidence that suggests that once authorities address an institutional weakness, a certain area stops from being an epicenter of corruption, according to both international and domestic polls and also assessment reports. Estonia's spotlights of corruption hence look very differently before and after accession, and we find evidence that suggests that it is a result of the implemented reforms. If before accession, the police, customs, and the public procurement process were greatly affected by corrupt practices, then after targeted reforms have been implemented these are off the radar.

In contrast, local governments and party financing have remained foci of corruption throughout the last two and a half decades. It also seems that state-owned enterprises have always been foci of corruption but have been identified in assessment report only recently. We do not find evidence of significant reforms in these areas that would address the institutional weaknesses that allow corrupt behavior to persist. To conclude, despite remaining caveats, corruption levels in Estonia are comparatively low for international standards, and the lowest among the new EU member states in the CEE region.

6.2. POLAND

⁴³⁴ Freedom House, *Nations in Transit 2014 Report*, 227.

Although in 1996 Poland was rated better than most of its CEE neighbors in controlling corruption⁴³⁵, the period that followed until its EU accession was marked by a steady decline in its performance, according to quantitative indicators. In 2002, according to corruption assessment reports, graft was “at best not decreasing.”⁴³⁶ The country registered its first improvements in 2004, according to its WGI control of corruption estimate. This positive trend continued uninterrupted until 2013.⁴³⁷ According to the most recent estimates, Poland’s anti-corruption performance is rated third in the CEE region only after Estonia and Slovenia. The evidence drawn from the within-case analysis suggests that similar to Estonia, the reforms that Poland adopted strengthened its overall institutional anti-corruption design, which is currently less permissive of corrupt practices than it was the case before accession. A lot of the institutional loopholes of the 1990s were addressed before accession, which explains the country’s improving anti-corruption performance after accession.

Early transition period (1990s-1998)

Up until the beginning of the 2000s, Poland did not have either a coordinated anti-corruption strategy or a specialized anti-corruption agency. Yet, numerous legislative acts were adopted, and various institutions were delegated competences to prevent the problem. There was no specialized anti-corruption agency in the early transition years. The ordinary police and the Prosecutor’s Office were the main two institutions meant to pursue corruption cases. The Minister of Justice held simultaneously the position of

⁴³⁵ World Bank, *World Governance Indicators 2014*.

⁴³⁶ Open Society Institute, *Monitoring the EU Accession Process*, 396.

⁴³⁷ World Bank, *World Governance Indicators 1996-2014*.

Prosecutor-General, a fact that raised questions about prosecution's independence to pursue cases of grand corruption.⁴³⁸

The Polish state's financial control framework was extensively developed during transition years and represented one of the main pillars in the fight against corruption. The main institution in charge for safeguarding public spending was the Supreme Audit Office (NIK), an agency with a long tradition. It was initially established in 1919 and it audits the activities of central and local public administration. Its responsibilities include revealing irregularities, and proposing practical and regulatory improvements. The head of NIK is appointed for a six-year term by an absolute majority of MPs and with the approval of the Senate. The NIK's term of office does not coincide with the normal electoral cycle. In this sense, NIK is considered to be an independent and impartial auditing institution, and "the most effective supreme audit institution of any EU candidate country."⁴³⁹ It reports to the Parliament and its main findings are publically available on its website since 1998. The NIK's findings however have a low level of implementation and this fact has not changed until today. According to the World Bank 1999 report, there is generally, a "low response rate to [the NIK] reports, whether by prosecutors, Parliament, or other responsible public bodies."⁴⁴⁰

The legislation on the prevention of conflicts of interest in Poland was developed during transition years but was quite ineffective in practice, and quite often infringed. Until today, it represents the basis for regulating conflict of interest and asset disclosure. In this regard, according to the 1997 Act on Limiting Conduct of Economic Activities by

⁴³⁸ Act on Procuracy, *Law Journal* 31 (138), 1985, cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁴³⁹ Open Society Institute, *Monitoring the EU Accession Process*, 397.

⁴⁴⁰ World Bank 1999 Report, *Corruption in Poland*, p. 27.

Public Officials, high-rank public officials may not hold additional positions without the approval of the head of the institution, be members of political parties, or hold positions in trade unions.⁴⁴¹ Also, their employment opportunities are restricted one year after leaving office, to prevent potential conflicts of interest. Violations were frequent occurrences but penalties were mostly never enforced.⁴⁴² Members of parliament are also subject to conflict of interest provisions. No economic activities are allowed with public assets or purchase of such assets as sources of income.⁴⁴³ Despite explicit penalties in case of violation of the law, in practice these did not function effectively during the 1990s.⁴⁴⁴ According to GRECO, the mechanisms for monitoring compliance with conflict of interest legislation are very well developed but they are often too sophisticated (involves coordination of various institutions) to be fully effective.⁴⁴⁵

Asset monitoring is guided by the same 1997 Act. In this regard, both MPs and a vast range of senior public officials have to annually submit asset declarations as well as upon assuming and leaving office. Declarations are held for six years but are not made public. According to GRECO, existing regulations can be bypassed by transferring assets to family members.⁴⁴⁶ The law requires also senior officials and their spouses to submit information on the benefits they receive to a Register of Benefits that is publically accessible and maintained by the State Election Commission. Yet, according to NIK, declarations are often not submitted at all, especially at local government level, and no sanctions are applied. Moreover, the law does not permit receivers of declarations to

⁴⁴¹ Act on Limiting Conduct of Economic Activities by Public Officials, *Law Journal*, 106 (1998).

⁴⁴² Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁴³ 1996 Act on Fulfillment of Mandate by Deputies and Senators.

⁴⁴⁴ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁴⁵ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)4_Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)4_Poland_EN.pdf).

⁴⁴⁶ Open Society Institute, *Monitoring the EU Accession Process*.

compare them with data held by tax authorities.⁴⁴⁷ In this sense, declarations cannot be verified effectively, an important loophole in the legislation.

During early transition years, political party finance was very poorly regulated and considered highly corrupt. A characteristic feature, in this sense, was “the tendency of State-owned companies to provide money to parties in a disguised way or illegally.”⁴⁴⁸ The first steps to address this concern and make party funding more transparent were taken in 1997, and further salient amendments were passed in 2001. These reforms established a much stricter framework meant to reduce corruption. The new provisions introduced state funding for parties winning more than three percent of the national vote, set ceilings on campaign expenditures, banned corporate donations, and granted a strong monitoring role to the Elections Commission. Moreover, parties are mandated to report regularly on donors. The Commission publishes the annual financial statements in the Official Journal. Until 2001, there was no sanctioning mechanism that the Elections Commission could apply in case parties did not submit this information. Under the new provisions, parties that submit erroneous, partial or no reports are subject to serious limitations of state subsidies for four years, fines, or up to two years of imprisonment.⁴⁴⁹

In the 1990s it was the 1994 Public Procurement Act that regulated public procurement.⁴⁵⁰ With the introduction of changes to the procurement legislation in 1997, Poland largely aligned its provisions to the EU directives, and ended its most overt corrupt practices that were predominant in its early transition period. Yet, the Public

⁴⁴⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁴⁸ Open Society Institute, *Monitoring the EU Accession Process*, 430.

⁴⁴⁹ Act on Political Parties (1997).

⁴⁵⁰ Act on Public Procurement, *Law Journal*, 76 (344), 1994.

Procurement Office (PPO) did not have the capacity to effectively check procurements.⁴⁵¹

In this sense, corruption remains widespread. Later comprehensive amendments were passed in 2001 to fully harmonize existing legislation with the EU regulations. Yet, there is no adequate monitoring of assets or integrity of individuals responsible for public procurement. Infringements of the Public Procurement Act are considered “violations of budget discipline, for which responsibility was largely symbolic until the new Public Finance Act came into effect in 1999.”⁴⁵² There was no code of ethics put in place either. Also, there is no public list of individuals or companies excluded from the bidding process in case of existing previous convictions related to public procurement.

The main weaknesses in the Polish anti-corruption policy in the 1990s as seen by international assessments were the lack of a specialized independent anti-corruption body responsible for the coordination of policy implementation, the politicization of the prosecution system where the Minister of Justice and Prosecutor General were a unified position, patronage appointments in the civil service and state-owned companies, and the lack of supervision of the off-budget funds.⁴⁵³

During the early transformation period, corruption represented a serious concern in Poland. Both local and international assessments suggested that the sectors most widely affected by corruption in the 1990s were healthcare, judiciary, local governments, and central administration.⁴⁵⁴ Wide discretionary powers among civil servants were considered among the main causes of the prevalence of corrupt practices. Without

⁴⁵¹ GRECO, *Evaluation Report on Poland*, 2002, 22.

⁴⁵² Open Society Institute, *Monitoring the EU Accession Process*, 435.

⁴⁵³ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁵⁴ Jacek, Kurczewski, *Posłowie a opinia publiczna* [Deputies and Public Opinion], 1999; Open Society Institute, *Monitoring the EU Accession Process*.

adequate checks in place, corrupt exchanges continued to be frequent occurrences. Other areas affected were the off-budget agencies, judicial and prosecution bodies, customs, political party finance, and public procurement. Privatization was also a process particularly affected by corruption. According to the Supreme Audit Office (NIK), the main “corruption fostering mechanisms” in the early transformation period were:

“excessive powers of individual officials; excessive discretion enjoyed by civil servants; inadequate documentation and reporting of decision-making processes; weakness of internal controls; unequal access to information; lack of accountability, including the abuse of collegial decision-making structures; and failure to take specific anti-corruption steps, in particular the inadequacies of the regime for monitoring officials’ asset declarations.”⁴⁵⁵

Agencies using off-budget funds represented an important locus of corruption, and “one of the main loci of political party patronage (along with state-owned companies)” in the 1990s.⁴⁵⁶ This share of public spending (that represented 40 percent of expenditures and 30 percent of revenues in 1999⁴⁵⁷) is excluded from the state budget, does not require parliamentary approval, and is not subject to parliamentary supervision. Another source of corruption, in this same context, was the lack of any regulatory framework for lobbying activities. At the same time, the World Bank found evidence of important amount of money being offered in exchange for the adoption of certain laws.⁴⁵⁸

As further shown, salient anti-corruption mechanisms were established in the pre-accession period with financial and training assistance on behalf of the EU that helped harmonize Polish standards and legislation with EU requirements, and subsequently

⁴⁵⁵ Summary materials of 2000 report, “Danger of Corruption in Light of the NIK Audits, March 2000,” cited in Open Society Institute, *Monitoring the EU Accession Process*, 404.

⁴⁵⁶ Open Society Institute, *Monitoring the EU Accession Process*, 398.

⁴⁵⁷ 1999 World Bank data, cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁵⁸ Open Society Institute, *Monitoring the EU Accession Process*, 427.

reduce the phenomenon.⁴⁵⁹

Pre-accession period – the Polish anti-corruption agenda (1998-2004)

The 1999 World Bank report identified “high level corruption”⁴⁶⁰ as the most salient corruption problem for Poland.⁴⁶¹ The European Commission, in this regard, has consistently expressed its concern regarding corruption in Poland and condemned government inactiveness to genuinely address the phenomenon. The European Commission 2000 Regular Report pointed at weaknesses such as “excessive but poorly managed bureaucracy, insufficient controls, lack of transparency and a general lack of accountability.”⁴⁶² During this period, Poland has generally made important legislative progress in terms of improving its anti-corruption performance. Several of them, such as civil service reform, were implemented as a result of EU pressure.⁴⁶³ Yet, the Commission has not granted any direct assistance for the development of anti-corruption policy in Poland.

Among the reforms that were adopted during pre-accession, the changes made to the bribery legislation, the Electoral Act, meant to strengthen political party finance regulations, and the Act on Access to Information should be mentioned as most salient ones. Also, several amendments were introduced in 2000 to the penal code that criminalized both giving and accepting bribes by public officials, and hence fulfilled the

⁴⁵⁹ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁶⁰ The report defined “high level corruption” as corruption committed by high and elected officials including parliamentarians, ministers, prosecutors and judges.

⁴⁶¹ World Bank, “Corruption in Poland: Review of Priority Areas and Proposals for Action” (Warsaw, 1999).

⁴⁶² European Commission, *2000 Regular Report*, 18.

⁴⁶³ European Commission, *2000 Regular Report*, 18.

requirements of most international conventions. The Public Procurement Act was also amended to limit the access to public contract bidding of individuals and companies that were convicted of corruption. More amendments established procedures to facilitate international cooperation and legal assistance in controlling corruption. In 2001-2002, by court decisions, the scope of passive bribery was extended to cover directors of hospitals and housing cooperatives managing public assets.⁴⁶⁴ A lot of the pre-existing loopholes that allowed corruption to persist in the 1990s were addressed. Legislation does not consider though as criminal offense the provision of non-material benefits to third parties. Also, criminal liability for bribery for legal entities was not introduced, and the definition of a public official was unclearly formulated.⁴⁶⁵ The latter issue, in particular, introduced a new leeway in the legislation for corruption to persist.

In 2000 the government passed important anti-money laundering legislation that led to the establishment of a Financial Information Unit (FIU) responsible for monitoring suspicious financial activity. It also mandated financial institutions to notify large suspicious transactions to the FIU. Moreover, starting 2003 financial institutions had to notify the FIU of all financial transactions. In this context, prosecutors were granted the competence to suspend transactions for up to 48 hours.⁴⁶⁶

Furthermore, the government finally adopted its first anti-corruption strategy in 2002 that outlined the reforms to be undertaken in the following years. Still, there was no mention of a specialized institution to coordinate the implementation of the strategy. In this sense, while there was a specialized unit within the Minister of Interior dealing with anti-corruption activities of its various branches, the coordination of activities in other

⁴⁶⁴ Open Society Institute, *Monitoring the EU Accession Process*, 408-409.

⁴⁶⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁶⁶ Open Society Institute, *Monitoring the EU Accession Process*.

state institutions was still unclear. The EU, hence, criticized the strategy as “flawed” because it did not address high-level corruption and did not provide the supervision team “sufficient administrative and political backup.”⁴⁶⁷

Up until 2002, the internal audit system was poorly developed in Poland. Despite the existence of internal audit units in every central public administration institution, they “lack[ed] a unified structure, common methodology and functional independence.”⁴⁶⁸ The EU also drew attention to the need to strengthen internal auditing.⁴⁶⁹ With the amendment of the Act on Public Finances in 2001, the functional independence was strengthened, the scope of inspections was defined, and criteria and procedures for appointing auditors were outlined, that put the basis for more effective internal audit mechanisms.⁴⁷⁰ Also, in 2002 the financial assets and real estate declarations of MPs were mandated to be made public on the House of Deputies website. Moreover, the House of Deputies and the Senate Ethics Commission verify the veracity of declarations, a change in legislation that increased compliance significantly.⁴⁷¹ The submission of false data is considered a criminal offence.

Civil service in Poland was reformed several times in the 1990s. Among the most important ones were the decentralization reform, and the adoption of the Civil Service Act. The latter represents an important step towards a depoliticized public administration. In this sense, the Act contributed notably to reducing recruitment based on party patronage and other non-merit based criteria. Since 1999 only civil service officials could compete for high-level vacancies, and general recruitment had to be necessarily

⁴⁶⁷ Freedom House, *Nations in Transit 2004 Report*.

⁴⁶⁸ Open Society Institute, *Monitoring the EU Accession Process*, 412.

⁴⁶⁹ European Commission, *2000 Regular Report on Poland*.

⁴⁷⁰ Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁷¹ Open Society Institute, *Monitoring the EU Accession Process*.

mediatized. Two years later however, a new amendment reversed some of the progress made by allowing individuals outside the civil service to be appointed in managerial positions without a recruitment procedure, and only at the recommendation of political parties.⁴⁷² Outsourcing of public administration activities represented, in this context, another source of serious concern that was highlighted both by domestic and international organizations.⁴⁷³ In the EU pre-accession period hence, patronage still represented an important problem in the Polish civil service.

During the pre-accession period hence, official corruption in Poland could be grouped into misuse of power and direct bribery. In this sense, bribery was widespread during the communist period, and some claim that, “the lack of a ban on former Communists holding public office allowed those practices to be injected into the new democratic system.”⁴⁷⁴ Moreover, the lack of law enforcement was aggravating these issues even further.⁴⁷⁵ GRECO recommended in this respect, establishing a National Advisory Council on Corruption, bolstering cooperation with civil society, providing training programs to judges and public servants, and implementing codes of conduct for public administration authorities.⁴⁷⁶

On the eve of EU accession, despite numerous reforms aforementioned, perception on corruption among Poles continued to worsen. This attitude was reflected in the 2004 TI’s Corruption Perception Index where Poland received the lowest corruption

⁴⁷² Open Society Institute, *Monitoring the EU Accession Process*.

⁴⁷³ 2001 NIK Report, and 1999 World Bank report, cited in Open Society Institute, *Monitoring the EU Accession Process*, 422.

⁴⁷⁴ Freedom House, *Nations in Transit Report 2005*.

⁴⁷⁵ Freedom House, *Nations in Transit Report 2005*.

⁴⁷⁶ Freedom House, *Nations in Transit Report 2003*.

score (3.5 out of 10) in the whole Union. One explanation for this process highlighted the extreme difficulty to address the phenomenon since “the population has accepted it.”⁴⁷⁷ According to interviewed anti-corruption experts in Poland, the explanation for this trend is somewhat different. In 2003, just a year before joining the EU, one of the worst cases of corruption, the “Rywingate” scandal, was revealed. The media broadcasted very thoroughly the case and the public hearings into influence peddling thus exposing citizens to numerous details concerning a corrupt Polish elite. This aggressive media coverage has raised awareness amongst the population, and significantly worsened perceptions about corruption in Polish society and politics.⁴⁷⁸ Moreover, an increase in the number of corruption-related convictions was registered in 1998-2002. Yet, this increased number of convictions was a reflection of better institutional tools to counter corrupt practices rather than of worsening corruption in this period.⁴⁷⁹ In the puzzling case of Poland, control of corruption indicators that are indicative of a worsening situation during the pre-accession are a reflection of perceptions (influenced by increased media attention) rather than of an actual decrease in anti-corruption performance.

Post-accession anti-corruption developments

By the time Poland joined the European community of states, its overall institutional framework for combatting corruption was well developed and considered to have further improved in the following years. Control of corruption indicators show that

⁴⁷⁷ Freedom House, *Nations in Transit Report 2005*.

⁴⁷⁸ Anonymous (expert), interviewed by author, Warsaw, September 2016.

⁴⁷⁹ Anonymous (experts), interviewed by author, Warsaw, September 2016.

perceptions of corruption have improved after accession as well.⁴⁸⁰ 2006 witnessed the first progress since 2000, in this regard. According to TI, the more positive public perception was an outcome of the establishment of the Central Anticorruption Bureau (CBA), arrests of senior Ministry of Finance officials with criminal connections, and arrests of corrupt politicians.⁴⁸¹

The government set up in 2006 the CBA as a separate agency empowered with coordinating and investigating competences.⁴⁸² The agency can also trigger administrative and criminal proceedings. The Director of CBA is appointed and supervised by the Prime Minister for a four-year term, and reports annually to the Parliament. CBA's legal basis, however, "does not provide sufficient guarantees against potential misuse of the Bureau as a political tool."⁴⁸³ Moreover, Prime Minister's influence over CBA, "in combination with an appointment procedure that does not require any specific professional background for the CBA management, and a strict hierarchy in which the Head of the CBA has wide discretionary powers over staff, may increase risks of abuse."⁴⁸⁴ The corruption scandals in 2010-2014 as well as the choice of CBA targets confirmed the politicization of the institution.⁴⁸⁵ Moreover, the latest 2012 CBA report did not prove "highly complex investigations" that concern high-rank officials.⁴⁸⁶

Other salient institutions are the prosecutors' offices that include units specialized in organized crime and corruption. Moreover, some ministries introduced independent

⁴⁸⁰ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*.

⁴⁸¹ Freedom House, *Nations in Transit Report 2007*.

⁴⁸² Freedom House, *Nations in Transit Report 2011*.

⁴⁸³ http://www.cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf.

⁴⁸⁴ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 5.

⁴⁸⁵ Freedom House, *Nations in Transit 2010-2015 Reports*.

⁴⁸⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*.

corruption prevention systems with very limited institutional coordination of activities amongst themselves.⁴⁸⁷ Government anti-corruption priorities during post-accession, in this sense, have lacked continuity. According to Freedom House, the system of institutions responsible for combatting corruption “does not seem to have deterred corrupt behavior by politicians and other public officials, as major scandals have steadily accumulated in recent years.”⁴⁸⁸ The European Commission, in this regard, calls for greater institutional cooperation:

“Secondary legislation appears to be needed to specify the exact terms of cooperation among the institutions charged with preventing and fighting corruption. Such clarification would help avoid overlaps in competencies and potential competition among agencies which currently cooperate on an *ad hoc* basis.”⁴⁸⁹

After five years of no strategic national program on controlling corruption, the Ministry of Interior elaborated a national anti-corruption strategy and had it approved by the government in 2014. The multiyear program increases, in this regard, the competences of the Ministry of Interior by making it the main institution responsible for coordinating the actions of agencies dealing with control of corruption. It also highlights internal control, educational and prevention-oriented measures.⁴⁹⁰ The strategy, however, does not include whistleblower protections, leaving the issue still unaddressed. Moreover, GRECO highlights the need to further develop and refine the existing legal and ethical framework that regulates conflicts of interest.⁴⁹¹

Addressing GRECO’s recommendations, the Polish government made progress in containing bribery. In this sense, ‘one-stop shop’ desks were set up in local public

⁴⁸⁷ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*.

⁴⁸⁸ Freedom House, *Nations in Transit Report 2014*.

⁴⁸⁹ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 7.

⁴⁹⁰ Freedom House, *Nations in Transit Report 2015*.

⁴⁹¹ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)4_Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)4_Poland_EN.pdf).

administration institutions to avoid contact between officials and applicants, wages were increased, and on-the-spot cash fines for speeding offences were eliminated.⁴⁹² In 2008, the government set up the ‘*anti-corruption shield*’ to protect the largest privatizations and public tenders. It represents a platform for institutional cooperation between civilian and military secret services that also includes CBA. The institutions involved in the process have not yet reported results to the public.⁴⁹³

Salient issues however still remain unaddressed. No further amendments have been made to the party financing framework after accession. In this sense, Poland would benefit from extended control of party finances beyond the regular annual report audits. Despite new competences allocated to the Electoral Commission in 2001 to control party finances, GRECO recommends “greater specialisation to carry out effective checks of party finances.”⁴⁹⁴ Moreover, NIK highlighted the persistence of “ineffective supervision mechanisms” in state-owned enterprises, as well as partisan appointments to senior management positions.⁴⁹⁵ In this context, more transparency in the ownership structure of public businesses and of party membership has been recommended to more effectively disclose cases of undue influence.⁴⁹⁶

In 2005 the government adopted a law on lobbying that offers a definition on the process that is not clear enough, however, and provides a partial regulatory framework. Concerning is the fact that the law does not cover government functions outside the process of adopting legislation.⁴⁹⁷ Moreover, a compulsory public register was introduced

⁴⁹² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 7.

⁴⁹³ European Commission, *Anti-Corruption Report 2014*, 8.

⁴⁹⁴ www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2919_Second%20Poland_EN.pdf

⁴⁹⁵ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 9.

⁴⁹⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*.

⁴⁹⁷ Act on Lobbying Activities During Legislative Process. www.sejm.gov.pl/prawo/lobbing/kon12.htm

for professional lobbyists to register. The European Commission calls this law “a step in the right direction” but since it can be easily circumvented, there is a stringent need for it to be amended.⁴⁹⁸ GRECO also recommended the need for more transparency in interactions between MPs and lobbyists.⁴⁹⁹

Furthermore, despite 2013 amendments to the Law on Public Procurement, the procurement process remains an area of concern after accession as well. Certain reforms have been implemented yet the process is still plagued by corruption. There is evidence of graft with regard to EU funds, and local level public tenders, in particular. A reason for the latter is the weakness in the internal control of procurement procedures. Audit recommendations are not considered and implementation is not adequately supervised. In this sense, the EC recommends “closer scrutiny of public procurement” more generally, and “a broader scope and more independence” to internal audit in municipalities.⁵⁰⁰

In light of the institutional reforms reviewed above, Poland’s control of corruption ratings have improved over the years since it joined the Union in 2004. According to the most recent 2013 Special Eurobarometer on Corruption, 82 percent of Polish citizens acknowledge that corruption is a widespread phenomenon in their country,⁵⁰¹ yet corruption is not a priority problem any longer as such either for the citizenry or for the government. 28 percent of respondents in the same survey consider that government efforts to combat corruption are effective. This is five percent higher than the EU average. Further, as many as 30 percent of respondents agree that there are enough

⁴⁹⁸ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 4.

⁴⁹⁹ GRECO, “Corruption prevention in respect of members of parliament, judges and prosecutors,” 2013, 60.

⁵⁰⁰ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 9.

⁵⁰¹ European Commission, *2013 Special Eurobarometer* 397.

successful prosecutions in Poland to deter corrupt practices. The WGI indicators for control of corruption, also reflect a continuous progress starting 2004.⁵⁰²

In this context, we do notice a discrepancy between reports that highlight numerous weaknesses in the institutional anti-corruption setup that still need to be addressed and the country's improving corruption ratings. Despite the weak institutional checks on power that contain salient loopholes, corruption stopped from being perceived as a problem in Poland due to the numerous reforms that have been adopted especially in the pre-accession period as well as the increasing number of low-level prosecutions. The pace of reforms has slowed down after accession. Moreover, many reforms that were adopted did not address previously existing loopholes such as in public procurement and lobbying, leaving corrupt behavior undeterred. According to Freedom House *2014 Nations in Transit* (NIT) report, major scandals of institutional and political corruption still persist. They are also more frequently reported than before.⁵⁰³ NIT 2014 assessment report on Poland concludes that, "public figures are undeterred by the prospect of punishment, and that corruption is more entrenched than previously thought."⁵⁰⁴ Moreover, according to the European Commission, the latest corruption-related cases and accusations resulted in resignations and dismissals, hence "demonstrating that politicians were held politically accountable."⁵⁰⁵ Yet, these have not triggered any consequent penalties. In this sense, the Polish government is recommended in the years to come to streamline its long-term anti-corruption efforts, strengthen the safeguards against the

⁵⁰² World Bank, *World Governance Indicators 2014*.

⁵⁰³ Freedom House, *Nations in Transit Report 2014*, 482.

⁵⁰⁴ Freedom House, *Nations in Transit Report 2014*, 482.

⁵⁰⁵ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 7.

politicization of the CBA, implement effective and uniform checks at central and local level in public procurement, and strengthen the supervision of state-owned companies.⁵⁰⁶

The empirical analysis of the Polish case finds evidence that supports the hypothesis put forward in this study. The country has established relatively strong institutions for containing corrupt behavior both in the 1990s and the period before it joined the Union. Over time, it has also addressed numerous loopholes these institutions had previously embedded thus strengthening its overall institutional anti-corruption design. Meanwhile, certain issues were left unaddressed also after accession. The regulatory framework on party financing remains deficient to a certain extent, the activity of state-owned companies is non-transparent due to certain institutional loopholes in the legislation, and the process of public procurement is still affected by corruption. These are the areas that experienced few effective reforms, and are also most affected by corruption after accession. Hence, loopholes in the institutional designs reflect the remaining foci of corruption after accession.

The identified weaknesses, moreover, relate to the capacity of internal checks to enforce the law. Or, the relevant law enforcement institutions do not follow through the findings of agencies responsible to identify irregularities. Hence the internal monitoring mechanisms within the executive and the legislature are the Polish Achilles' heel.

Conclusion

⁵⁰⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Poland*, 11.

In this chapter I assessed the reform process of institutional anti-corruption designs among the frontrunners as a first step into testing the first hypothesis. This chapter found evidence that both cases, Estonia and Poland, have established strong institutional designs by addressing important ‘loopholes’ in their anti-corruption mechanisms. To date, corruption does not represent a salient problem for either of the two cases. Both states yet experience a small number of foci of corruption after accession that need further attention. Estonia, in this regard, still experiences corruption in party financing and local public administration. Poland struggles with corruption in party financing, public procurement, and state-owned companies. Moreover, there is conclusive evidence that Poland struggles with more institutional weaknesses than Estonia. It is ranked third after Estonia and Slovenia in its control of corruption. Yet both countries register improved anti-corruption performance after accession.

Finally, evidence shows that the remaining foci of corruption are related to weak internal control mechanisms that were poorly reformed before EU accession. Poland in this context, is experiencing weaker internal checks than Estonia as evidence shows.

7

Assessing Anti-Corruption Designs of Middle Group States

In this chapter we turn to the empirical analysis of institutional anti-corruption designs among the middle group cases as an initial step into testing the first hypothesis. This chapter finds evidence that shows that all three cases have established relatively strong institutional designs by addressing existing ‘loopholes’ in their anti-corruption mechanisms. Corruption still represents a salient problem for all cases in this group today. Only Slovenia did not have corruption identified as a problem in its transition years. Furthermore, all cases experience foci of corruption after accession though much fewer than before accession. Evidence in this regard is inconclusive for Slovenia. Latvia experiences currently corruption mainly in the higher echelons of public administration and the legislative process. Lithuania still struggles with corruption namely in local public administration, the legislative process, law enforcement, and public procurement. Slovenia’s foci of corruption are the legislature, party finance, law enforcement, local administration, and state-owned companies. Moreover, a commonly identified trend in all three cases is the existence of closely interconnected ties between political and economic elites. Evidence shows that these remaining foci of corruption (findings inconclusive for Slovenia) are due to deficient internal checks in these spheres that were poorly reformed before the EU accession.

7.1. LATVIA

During early transition years Latvia implemented several important reforms that brought a positive trend to its anti-corruption performance. The EU played a crucial role in Latvia's anti-corruption reform agenda. Coupled with significant financial assistance, Latvia registered better reform results than neighboring Lithuania, and Poland on the eve of EU accession. During early post-accession years, Latvia faced salient implementation issues that did not produce any major improvements in its control of corruption. Starting with 2009, however, new reforms were adopted that allowed for more substantial progresses to be registered. These have made Latvia outperform Slovakia, Hungary, and the Czech Republic in 2013, according to the WGI control of corruption indicator.⁵⁰⁷ The evidence drawn from the within-case analysis to follow suggests that the reforms Latvia adopted led to the strengthening of its overall institutional anti-corruption design, which is currently less conducive to corrupt practices than it was the case before accession. A lot of the institutional loopholes of the 1990s have been addressed via reforms, fact that explains the country's steady anti-corruption performance after accession.

Early transition period (1990s-2001)

Latvia's rapid and ascending anti-corruption performance can be explained by its active interest during the early transition years in adopting anti-corruption reforms. In this sense, Latvia was the first country in the CEE region to request assistance from the World Bank in 1996 to improve governance and prevent corruption. In 1997, the Government established the Corruption Prevention Council that was presided by the Minister of

⁵⁰⁷ World Bank, *World Governance Indicators 2015*.

Justice. It was composed of representatives of various state institutions such as the Director-General of State Revenue Service, and the Prosecutor-General, as well as civil society representatives. One of the main achievements of the Council was the design and adoption of a Corruption Prevention Program in 1998 that included short and long-term goals targeting prevention, prosecution, enforcement, and education. The Program was annually updated. Most of the included measures were successfully completed.⁵⁰⁸ In 2000, a Secretariat was set up for the Council that overtook its directing role over the anti-corruption policy. The Council was later transformed into a consultative body of the Secretariat.

In early transition years, internal audits were not taking place on a regular basis in Latvia. The state was in the process of establishing an integrated state financial control framework. In this sense, internal audit units were set up in most state institutions only before EU accession. Moreover, the State Audit Office (SAO) was established in 1993 to audit the finances of all state and local government institutions. It can audit any institution, organization, official, enterprise or NGO that makes use of state or municipal funds. It cannot audit the Parliament, however. It is the Parliament who appoints the General-Auditor and the other five auditors, members of the SAO Council, for a term of seven years. The Council decides on the audit plan. The institution is considered to be independent and have extended competencies, but concerns have been raised about its dependence on government budget allocations.⁵⁰⁹ In 2002, SAO's powers were extended to allow the audit of the use of EU funds to the level of final beneficiaries.⁵¹⁰ Yet, SAO's

⁵⁰⁸ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁰⁹ "Stressing necessity to grant independence of SAO budget in the law," LETA news agency, 23 March 2002.

⁵¹⁰ Open Society Institute, *Monitoring the EU Accession Process*.

audit results are rarely used and mostly not leading to any corrective measures. Moreover, its cooperation with other state and law enforcement institutions is rather modest.

The Latvian Criminal Code sanctions blackmailing which also covers forced extortion of property. Also, the 1995 Corruption Prevention Act stipulates clearly conflict of interest restrictions on public officials' activities and requires them to mandatorily declare their assets and income. The latter declarations are public and some are published in the official bulletin *Latvijas Vestnesis* on an annual basis. The Act also restricts the president, ministers, MPs, and parliamentary secretaries from holding adjacent positions (except educational or artistic) other than the one they were appointed or elected for. Still, the Law has significant weaknesses: the State Revenue Service, the main monitoring agency, does not have at its disposal enough financial, human, or legal resources to guarantee full financial disclosure of public officials.⁵¹¹

During early transition years party funding was weakly regulated. No state funding was available, fact that is considered to have proliferated corruption and illegal funding.⁵¹² According to the Law on Financing of Political Parties, parties could receive financial support only from membership fees, donations, and profits from business activities. No income was allowed from state enterprises or institutions, party foundations, religious, or foreign entities. Also, there was a cap to how much single donors could contribute annually. Anonymous donations had to be reported and subsequently regulated by the Ministry of Justice. Also, parties were required to submit annual financial declarations to the Ministry of Justice while failure to do so could have

⁵¹¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁵¹² Open Society Institute, *Monitoring the EU Accession Process*.

led to party disbanding. Still, most major parties are considered not to declare a salient share of campaign expenses.⁵¹³

An analysis across parties and over time revealed that there were two major groups of contributors when it came to campaign funding: financial institutions and businesses dealing with transportation of oil and chemical products. The latter are considered to be especially powerful.⁵¹⁴ Moreover, eight of eleven parties in the analysis confessed that frequently the financial support offered came linked to political or economic demands, and “occasionally” parties yielded to these requests.⁵¹⁵ This undue influence has carried through, and represents a major concern until today.

In the early 1990s corruption was rated both domestically and internationally as a major problem in Latvian society and politics. The main foci of corruption as identified by assessment reports were public administration, off-budget agencies, the police, customs, the judiciary, the legislative process, as well as public procurement. It was also the only state in the CEE region that was categorized by the World Bank as a “captured state.”⁵¹⁶ In this regard, especially concerning was the influence of private interests through illicit lobbying on the legislative process.

In 1995, Latvia started out its anti-corruption performance with the highest level of corruption among the 2004 EU candidate countries. The numerous anti-corruption measures it implemented improved significantly its country ranking, so that by 2004 it

⁵¹³ Ikstens, Janis (political scientist, expert on party financing), interview, April 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁵¹⁴ Open Society Institute, *Monitoring the EU Accession Process*.

⁵¹⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁵¹⁶ James, Anderson, “Corruption in Latvia: Survey Evidence” (World Bank Working Paper: 1998). State capture is defined as “capture of the legislative process by business interests,” Open Society Institute, *Monitoring the EU Accession Process*, 319.

surpassed in performance Poland and Lithuania. This improved performance is explained by the numerous reforms that were adopted to address corruption. The new institutions left however many issues unaddressed. The loopholes that most impacted the effectiveness of anti-corruption mechanisms were the lack of supervision and oversight mechanisms. There was no effective supervision of public finances on behalf of the parliament over the activities of the off-budget agencies in the 1990s. There was no effective oversight mechanism of the procurement process either.

Pre-accession period – the Latvian anti-corruption agenda (1998-2004)

Latvia's anti-corruption agenda was mostly driven by the EU accession requirements under the Copenhagen criteria. Achieving a solid anti-corruption record represented in this context one of the main conditions for accession. In the period 1998-2002 all European Commission's Regular Reports highlighted the salience of tackling corruption for Latvia's accession, and expressed concern for the moderate lack of "concrete results on a broad scale."⁵¹⁷ Moreover, national authorities have also acknowledged the priority of containing corruption in the National Program for Integration in the EU as a EU main requirement.⁵¹⁸ EU's main driving role for reform was acknowledged in the areas of public administration, public procurement and internal audit, in particular.

Besides constant pressure for anti-corruption reform, the EU accession process also provided extensive financial assistance. This was directed towards the process of

⁵¹⁷ European Commission, *2001 Regular Report*, 20.

⁵¹⁸ Open Society Institute, *Monitoring the EU Accession Process*.

drafting anti-corruption legislation, training prosecutors, police officers, and journalists, as well as improving transparency in the judicial system. The 2001 GRECO evaluation report mentions that despite the recognition for the need of reform by the national authorities, the process of investigating and prosecuting corruption lacks institutional coordination and effectiveness.⁵¹⁹

The bribery legislation was considered relatively well developed in Latvia already before its EU accession process got started. Moreover, the Latvian Criminal Code was amended in 2002 to sanction active and passive bribery for both private and public sectors. It also sanctions indirect bribery, misappropriation of a bribe, abuse of official authority, and failure to act by a state official. The law still did not make legal entities criminally liable for acts of corruption, an important loophole that was left unaddressed in legislation.⁵²⁰

Latvia also passed an extensive legal framework that regulates conflict of interest. In this regard, a new Act on Conflict of Interest of Public Officials was adopted in 2002 that also included political party appointees to the boards of state-owned enterprises in the category of state officials. This inclusion addressed the concerns regarding corruption scandals surrounding state-owned enterprises that were revealed in the media. It required this category of officials to also file income and asset declarations, hence closing important loopholes that persisted in the 1990s. The Act also transferred the monitoring role of the State Revenue Service to the chiefs of individual state institutions. Despite the adoption of the new Act, weak oversight and enforcement mechanisms as well as

⁵¹⁹ GRECO, *Evaluation Report on Latvia*, adopted by GRECO at the 9th Plenary Meeting, Strasbourg, 13-17 May 2002, 2, <<http://www.greco.coe.int>>.

⁵²⁰ Open Society Institute, *Monitoring the EU Accession Process*.

political interference on behalf of senior officials in monitoring activities left existing legislation still quite ineffective.

Among the most salient anti-corruption endeavors registered in the pre-accession period were the adoption of a Corruption Prevention Program in 2001 and the set up of the Corruption Prevention and Combatting Bureau (KNAB) in 2002. The Program identifies the following areas as the most vulnerable to corruption: customs, traffic police, judiciary, local public administration, privatization, public procurement, tax collection, state supervisory institutions, and the appointment of public officials.⁵²¹ In this regard, the Program consisted of three main elements: prevention, enforcement, and education. Among other extensive reforms, it aimed at improving the functioning of the court system, reforming political party finance, establishing a centralized Audit Center, promoting transparency in public administration, and raising anti-corruption awareness among citizens.⁵²² Most of the newly enacted anti-corruption policies have been successful, and the ones in the areas of customs and police in particular.⁵²³ Yet, there was no clear progress against grand corruption and state capture, the more serious issues Latvia faced. Most of the institutional efforts were assessed as ineffective and public officials as “lacking sufficient political will to pass effective anti-corruption legislation.”⁵²⁴

There are several specialized agencies that are responsible for the investigation and prosecution of corruption in Latvia. Among the most important ones are the Security Police, the Economic Police Bureau, the Bureau for Combating Organized Crime and

⁵²¹ Government of Latvia, “Corruption Prevention Programme,” September 2001, 3.

⁵²² Government of Latvia, “Corruption Prevention Programme,” September 2001.

⁵²³ Open Society Institute, *Monitoring the EU Accession Process*.

⁵²⁴ Open Society Institute, *Monitoring the EU Accession Process*, 301.

Corruption, and the State Revenue Service.⁵²⁵ However, a serious concern regarding the implementation of anti-corruption policies is the unclear division of responsibilities among these agencies and the lack of institutional cooperation and coordination of efforts.⁵²⁶ In this regard, to introduce coordination of public sector anti-corruption policies, the Parliament established KNAB as the central specialized institution in 2002. Its competencies include the draft of anti-corruption legislation, control of the implementation process, the review of administrative offences, examination of asset and income declarations of public officials, monitoring party and campaign funding, and sanctioning infringements of the Anti-Corruption Act.

The Parliament appoints the chief of KNAB for a five-year term at the proposal of the Government. Yet, the legal set up of the organization was externally assessed as not strong enough to ensure its independent and effective activity considering the responsibilities it was delegated: subordination to the Ministry of Justice, no open competition for the selection of the head of KNAB, insufficient resources committed to the agency, limited mandate to obtain the necessary data for comprehensive investigations, and no mechanisms to enforce cooperation with other institutions.⁵²⁷ These are salient loopholes that hamper the effective implementation of its responsibilities as the main anti-corruption body in Latvia.

Despite leadership and financing issues in the first years of its activity, KNAB has achieved some laudable successes.⁵²⁸ In 2003 it unseated the Minister of Health, revealed serious violations of party financing, forced two coalition parties to restitute money from

⁵²⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁵²⁶ Freedom House, *Nations in Transit Report 2004*.

⁵²⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁵²⁸ Freedom House, *Nations in Transit 2004-2005 Reports*.

illegal donations, and charged two top-profile officials with bribery.⁵²⁹ Freedom House reports claim however that more convictions could have been made were it not for the courts' reluctance to address major cases, loopholes in existing legislation, and institutional rivalry.⁵³⁰

In 1998, the Parliament established the Office for the Prevention of Laundering Proceeds from Criminal Activity as a result of the adoption of anti-money laundering legislation. The Office operates under the umbrella of the General Prosecutor's Office. Yet, by the end of 2001, there were only two convictions made. The 2001 Regular Report recommends in this regard increasing the organizational capacity of the Office.⁵³¹ The same year, another special body was created within the Board of the Finance Police at the State Revenue Service to also investigate money laundering.

The Government has passed important reforms to address corruption in civil service, and hence to address the very negative perceptions of the public administration. A new Civil Service Act entered into force in 2001. According to the new Law, mandatory open competition was introduced in the recruitment of civil servants. Also, arbitrary dismissal is not possible anymore. A Code of Conduct for Civil servants also entered into force in 2001. The Code includes ethical standards that coordinate civil servants and society interactions, including conflict of interest situations. In 2003, Freedom House concluded that conflicts of interests were still common occurrences among civil servants.⁵³² Moreover, the government undertook important measures to increase transparency. A publically available online portal was set up for all state

⁵²⁹ Freedom House, *Nations in Transit Report 2004*.

⁵³⁰ Freedom House, *Nations in Transit Report 2005*.

⁵³¹ European Commission, *2001 Regular Report*, 49–50.

⁵³² Freedom House, *Nations in Transit Report 2003*.

institutions in 2002 where working agendas and documents discussed at the meeting, including of the meetings of the Cabinet, had to be made public.⁵³³

On a different note, there was no legislation passed to address the protection of whistleblowers, and job security is considered a vulnerable issue that discourages disclosure of officials' corrupt practices.⁵³⁴ Concomitantly, GRECO concludes that regular citizens have become more active and willing to report cases of corruption to the police.⁵³⁵

Off-budget agencies continued to represent one of the most salient foci of corruption during the pre-accession period, as concluded by SAO.⁵³⁶ Yet, new budgetary rules passed in 2001 introduced important changes to the state budget such as the elimination of off-budget funds. In this sense, "the 2001 State Budget Act included the maximum limits of the deficit at the end of 2001, as well as budgets of some agencies that were not previously included and a list of the State guarantees given during 2001."⁵³⁷ Hence a focus of corruption that has dominated the 1990s was addressed.

In contrast, there were not many reforms introduced in the pre-accession period that addressed the prevention of corrupt practices of members of parliament. Moreover, MPs enjoy extensive benefits as elected officials. They are exempt from important corruption prevention provisions laid out in the Conflict of Interest Law, such as reporting conflicts of interest to KNAB. In this regard, MPs can report with respect to other MPs' conflicts of interests but not to oneself. Moreover, parliamentary immunity provisions were not revised during the pre-accession period. MPs cannot be arrested,

⁵³³ Open Society Institute, *Monitoring the EU Accession Process*.

⁵³⁴ Open Society Institute, *Monitoring the EU Accession Process*.

⁵³⁵ GRECO, *Evaluation Report on Latvia*, 20.

⁵³⁶ GRECO, *Evaluation Report on Latvia*, 17.

⁵³⁷ Open Society Institute, *Monitoring the EU Accession Process*, 320.

prosecuted, detained, or have their property searched without the Parliament's consent. In this sense, GRECO recommends the need to pass clear guidelines to specify when immunity can be suspended.⁵³⁸ Later on in post-accession, GRECO recommended administrative immunity to be lifted altogether.⁵³⁹

In 2002, the Law on Financing of Political Parties was amended and thus introduced a more transparent system.⁵⁴⁰ Amendments introduce limited direct state funding to political parties who win at least three percent of the votes, as well as a mechanism for controlling party financing. In this context, the Law limits the amount of funding any given entity can donate annually, donations have to be made via bank transfers, and no third party donations are allowed. Moreover, parties have to fully disclose all donations and party expenditures.⁵⁴¹ Financial declarations have to now be submitted to the Central Election Commission, responsible for monitoring. This is considered a positive improvement given the independence and professionalism of CEC.⁵⁴² Also, financial reports have to be submitted to KNAB that has the authority to inspect party accounts, and in case of incomplete disclosures, may impose fines.

The public procurement legal framework was considerably improved during the EU pre-accession period. In 2002 a new public procurement act was passed intended to fine tune procurement legislation with EU directives but also to address the weaknesses of the pre-existing 1996 Act on State and Local Government Procurement. In this regard, the new law improves transparency of the procurement process by making publically available both the winning and the losing bids. The Procurement Monitoring Bureau

⁵³⁸ GRECO, *Evaluation Report on Latvia*, 25.

⁵³⁹ www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293_Latvia_EN.pdf.

⁵⁴⁰ Freedom House, *Nations in Transit Report 2003*.

⁵⁴¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁴² Open Society Institute, *Monitoring the EU Accession Process*.

(PMB) became the main entity responsible for the oversight of the procurement process and the complaints review process. Until 2002, PMB was an understaffed and underfinanced ministry department that had no autonomy to intervene in case of complaints being submitted during the tender procedures.⁵⁴³ This weakness was addressed and under the new Act by improving the appeals procedures. Yet, the new Act provides no sanctions in case of infringements of procurement regulations, and identifies no institutional authority to impose fines. According to an investigative analysis, bribes can reach 10-20 percent of a contract's value, and most of it gets rerouted to political parties.⁵⁴⁴

To conclude,, political corruption was still widespread in Latvia on the eve of EU accession.⁵⁴⁵ While graft in the lower levels of public administration was reduced, the phenomenon of “state capture” was mostly left unaddressed. As MPs and senior level public officials remain exempt from important anti-corruption provisions such as in the conflict-of-interest legislation, it becomes clear why more sophisticated financial schemes at higher levels still represented an issue. The European Commission, in this context, criticized Latvia's slow harmonization of its anticorruption legislation to the EU standards.⁵⁴⁶ Despite the 2003 reform, the judiciary was still not independent, and did not have the institutional capacity to carry out its tasks accordingly. These were also the main areas, Latvia was urged to address after its EU accession by international

⁵⁴³ World Bank, “Final Country Procurement Assessment Report,” 7, cited in Open Society Institute, *Monitoring the EU Accession Process*, 330.

⁵⁴⁴ Brauna, Anita (journalist, Diena), interview, Riga, April 11, 2002, cited in Open Society Institute, *Monitoring the EU Accession Process*, 331.

⁵⁴⁵ Freedom House, *Nations in Transit Report 2005*.

⁵⁴⁶ Freedom House, *Nations in Transit Report 2004*.

organizations.⁵⁴⁷

Concurrently, numerous foci of corruption have been addressed. Off-budget agencies for instance stopped being an issue when new budgetary rules were passed in 2001 thus closing one of the most salient loci of corruption of the 1990s. Numerous loopholes in party financing, public procurement, public administration, state supervisory mechanisms were addressed by passing anti-corruption reforms as part of the EU accession process. Hence, a lot of the institutions that Latvia has today were established or strengthened under the EU conditionality umbrella during its pre-accession.

Post-accession anti-corruption developments

In this context of the still dominant negative domestic perceptions about corruption in Latvia, the post-accession reform agenda started with the government adoption of the 2004-2008 National Program for Corruption Prevention. It envisioned several important reforms such as the implementation of codes of ethics within ministries and the creation of ethics commissions. In 2005 already, about 200 state agencies have submitted their anti-corruption planned activities to KNAB for assessment, as requested by the program.⁵⁴⁸ It is important to highlight that these reforms were passed before accession with implementation already in the years after.

A more impactful long-term program was the one developed by KNAB for the following 2009-2013 period. The plan included the implementation of radical reforms in

⁵⁴⁷ Open Society Institute, *Monitoring the EU Accession Process*, 343.

⁵⁴⁸ Freedom House, *Nations in Transit Report 2006*.

all state and municipal institutions.⁵⁴⁹ In this regard, the Law on Prevention of Conflict of Interest regarding Activities of Public Officials was amended in 2011 to provide legal protection to government officials who report on conflicts of interest attested in their institutions.⁵⁵⁰ To further reduce conflict of interest, the Parliament amended in 2013 the Law on Local Governments that states that elected members of municipal councils are not allowed to hold more executive positions within the same municipality. The amendments were targeted at improving oversight of policy implementation: some municipal councils could not achieve adequate supervision of their own executive agencies because earlier, “elected politicians themselves could also be the managers they were tasked with supervising.”⁵⁵¹ GRECO assessed the post-accession conflict-of-interest legislation as complex and rigid. In this sense, the law established incompatibilities and other limits on public officials that highlight formalistic compliance over assessing case-by-case situations that would focus on individual merits.⁵⁵²

In 2011, the government passed a law designed to diminish corruption in the political process by restricting illegal campaign donations. Starting 2012, the state began allotting an annual subsidy to all political parties that receive more than two percent of popular votes in elections. By passing the Pre-election Campaign Law, and amending the Law on Financing of Political Organizations, the parliament decreased the limit on campaign spending by half. According to the EU Anti-Corruption Report, “the new legislation appears a *prima facie* significant move in limiting the risk of political

⁵⁴⁹ Freedom House, *Nations in Transit Report 2010*.

⁵⁵⁰ Freedom House, *Nations in Transit Report 2012*.

⁵⁵¹ Freedom House, *Nations in Transit Report 2014*.

⁵⁵² [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)3_Latvia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)3_Latvia_EN.pdf).

corruption, but its implementation in practice will require strengthened controls.”⁵⁵³ Moreover, new amendments to the criminal code allow for criminal prosecution of persons connected to illegal campaign donations in large amounts.⁵⁵⁴

Starting 2012, the government passed additional legislation fostering transparency and accountability in several key areas known to be vulnerable to corrupt practices: wealth acquisition, public procurement, campaign finance, and appointment procedures. In this context, amendments to the Act on Initial Asset Declaration required residents to declare their assets above a certain threshold, including offshore accounts and properties, to the State Revenue Service. The state plans to use this information to be able to audit wealth acquisition and avert future illegal enrichment.⁵⁵⁵

Also, the government passed regulations introducing open voting in the Parliament for appointments of judges, the Prosecutor General, KNAB director and others to state offices. In 2013 the Parliament also amended the Constitution to mandate an open vote on the appointment of Constitutional Court judges. The Commission considers the amendments to improve on the previous secret voting procedure, which highly politicized the appointment and dismissal procedures concerning anti-corruption policy efforts. It also introduced clarifications regarding the status of Constitutional Court judges and prosecutors who were suspended because of criminal charges brought to them or disciplinary violations.⁵⁵⁶ Moreover, the Parliament furthered transparency regulations by demanding all parliamentary commissions to publish online their session protocols on the institution’s official page within ten days. Also, public bodies have to make

⁵⁵³ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Latvia*, 4.

⁵⁵⁴ Freedom House, *Nations in Transit Report 2012*.

⁵⁵⁵ Freedom House, *Nations in Transit Report 2013*, European Commission, *Anti-Corruption Report 2014*.

⁵⁵⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Latvia*.

mediatize on their website any conflict-of-interest infringements that involve their public officials.⁵⁵⁷

To address the lack of open competition in civil service recruitment, the government approved in 2013 amendments to the State Civil Service Law to guarantee a more impartial and merit-based selection of heads of state institutions. The new amendments also grant all candidates the right to be informed why they were not hired for a particular vacancy, as well as specify clear appeal procedures.⁵⁵⁸ Also in 2013, the Latvian parliament approved new regulations regarding administrative liability for procedural violations in public procurement. It hence closed a “major gap” that had until then undermined possibilities to apply heavier penalties for violations that were not categorized as criminal offences.⁵⁵⁹

In terms of the Latvian institutional framework during post-accession, KNAB becomes the main leading anti-corruption organization. If in the first years after its establishment KNAB was plagued by internal issues such as leadership and financing, and it dealt only with small and middle levels of corruption, then during post-accession it becomes much more visible and impactful at decreasing high-profile corruption, fact that significantly boosts its public opinion trust.⁵⁶⁰ With time, it accelerated its investigations, improved its financial efficiency, and gathered a dedicated team of young specialists. According to Freedom House, it has the capacity and deals successfully with corrupt politicians, civil servants, judges, policemen, customs authorities, high-ranked politicians,

⁵⁵⁷ Freedom House, *Nations in Transit Report 2013*.

⁵⁵⁸ Freedom House, *Nations in Transit Report 2015*.

⁵⁵⁹ Freedom House, *Nations in Transit Report 2014*.

⁵⁶⁰ Freedom House, *Nations in Transit Report 2006*.

and illegal financing.⁵⁶¹ In 2007, KNAB becomes one of the most trusted organizations in Latvia and manages to keep this privileged status until present.⁵⁶²

One of its main achievements was monitoring and prosecuting violations of political party financing and spending. Another important endeavor, according to the chief of KNAB, was increasing public awareness of corruption risks and its willingness to report cases of corruption.⁵⁶³ It also managed to bring to justice important oligarchs and significantly reduce their impact on the decision-making process.⁵⁶⁴ Politicians subsequently have attempted numerous times to undercut its activities by attacking its leadership, reducing its funding, and exploiting internal frictions during 2012-2013.⁵⁶⁵ In this sense, one of KNAB's most successful leaders was dismissed in 2008⁵⁶⁶, an internal crisis was artificially injected in 2010⁵⁶⁷, and it lost significant funding during 2010-2011 as a result of deep economic crisis⁵⁶⁸. KNAB's effectiveness and reputation have held strong amidst these political attacks, yet it still suffers from important weaknesses that have not been addressed so far. One of the main drawbacks is its dependence and supervision by the cabinet and the prime minister, in particular.⁵⁶⁹ The Supreme Court chief justice as well as the General Prosecutor recommended KNAB to "be drawn closer to the court system as a special unit within the procuracy rather than the executive."⁵⁷⁰

⁵⁶¹ Freedom House, *Nations in Transit Report 2008*.

⁵⁶² Freedom House, *Nations in Transit Report 2008*.

⁵⁶³ Freedom House, *Nations in Transit Report 2008*.

⁵⁶⁴ Freedom House, *Nations in Transit 2007-2014 Reports*.

⁵⁶⁵ Freedom House, *Nations in Transit 2007-2015 Reports*.

⁵⁶⁶ Freedom House, *Nations in Transit Report 2009*.

⁵⁶⁷ Freedom House, *Nations in Transit Report 2011*.

⁵⁶⁸ Freedom House, *Nations in Transit Report 2012*.

⁵⁶⁹ Freedom House, *Nations in Transit Report 2009*.

⁵⁷⁰ Freedom House, *Nations in Transit Report 2009*.

It is considered that the financial crisis has strengthened the positions of a small group of oligarchs in Latvia.⁵⁷¹ Yet, 2011 brought important changes in the fight against corruption when elections ousted two powerful businessmen from parliament and drastically reduced the share of seats of the Union of Greens and Farmers, a party controlled by a Latvian oligarch, Aivars Lembergs.⁵⁷² The new parliament included strong anticorruption advocates that in 2012 helped legally formalize a transparent and competitive process for the appointment of the head of KNAB thus closing a source of undue influence over the main anti-corruption organization in the country.⁵⁷³

Finally, an important impediment to Latvia's fight against corruption is the extensive length of court proceedings in cases of complex criminal matters.⁵⁷⁴ Courts are still reluctant to undertake responsibility for grand cases of corruption, prolonging the overall process even more.⁵⁷⁵ According to Valts Kalnins, Latvia's main specialist on corruption,

“Latvia is slowly becoming similar to several Western European states, where the civil service and court systems are relatively noncorrupt but politics is corrupt. Improvements are occurring in the justice environment and in the state bureaucracy, but [no visible improvements] in the political arena.”⁵⁷⁶

To sum up, despite still being a salient concern after accession, control of corruption is steadily improving.⁵⁷⁷ Progresses are due to KNAB's active and effective involvement in preventing corruption, but also due to the pressure stemming from

⁵⁷¹ Freedom House, *Nations in Transit Report 2011*.

⁵⁷² Freedom House, *Nations in Transit Report 2012*.

⁵⁷³ Freedom House, *Nations in Transit Report 2013*.

⁵⁷⁴ Freedom House, *Nations in Transit Report 2014*.

⁵⁷⁵ Freedom House, *Nations in Transit Report 2009*.

⁵⁷⁶ Freedom House, *Nations in Transit Report 2007*.

⁵⁷⁷ Freedom House, *Nations in Transit 2006-2015 Reports*.

international organizations and the EU.⁵⁷⁸ The involvement of anti-corruption watchdog organizations such as Delna and Providus was also assessed as contributing to an effective monitoring process of corrupt practices.⁵⁷⁹ Many foci of corruption from before were addressed after accession as well: wealth acquisition, public procurement, campaign finance, and civil service appointment procedures. Moreover, the legislative process became much more transparent though a better lobbying framework is still expected. These foci were addressed via improvements to the institutional framework, and namely, by eliminating numerous loopholes that allowed for the misuse of power. In this regard, some of the most powerful oligarchs including mayors, pharmaceutical businessmen, and senior court judges have been prosecuted and jailed⁵⁸⁰, fact that sent a strong shock wave across society that “corruption is no longer a risk-free activity.”⁵⁸¹ In 2014, Latvia joined the OECD Anti-bribery Convention as acknowledgment of its strong anticorruption legal framework.⁵⁸² The lack of adequate lobbying legislation, and stronger whistleblower protections however are some of the gaps that have not been addressed until today.⁵⁸³

The empirical analysis of the Latvian case finds evidence that supports the hypothesis put forward in this study. The 1990s were marred by corrupt practices in most state institutions. The lack of effective checks on power underpinned rent seeking. The country has established advanced institutions for containing these corrupt practices both in the late 1990s and the period before it joined the Union. Over time, it has also

⁵⁷⁸ Freedom House, *Nations in Transit 2006-2007 Reports*.

⁵⁷⁹ Freedom House, *Nations in Transit 2007, 2010 Reports*.

⁵⁸⁰ Freedom House, *Nations in Transit 2006-2008 Reports*.

⁵⁸¹ Freedom House, *Nations in Transit Report 2007*.

⁵⁸² “Latvia to Join OECD Anti-Bribery Convention,” *The Wall Street Journal*, 7 April 2014, <http://blogs.wsj.com/riskandcompliance/2014/04/07/latvia-to-join-oecd-anti-briberyconvention/>.

⁵⁸³ Freedom House, *Nations in Transit Report 2015*.

addressed numerous loopholes these institutions had previously embedded thus strengthening its overall institutional anti-corruption design. Meanwhile, certain issues have been left unaddressed. The regulatory framework on lobbying remains deficient to a certain extent, and the senior echelons of public administration are still affected by corruption. These are the areas that experienced fewer effective reforms in comparison to other foci of corruption and are very much connected to the closed ties between senior politicians and economic elites. Hence, loopholes in the institutional designs reflect the remaining foci of corruption after accession.

7.2. LITHUANIA

Similar to its Baltic neighbors, Lithuania started its anti-corruption pathway with one of the lowest estimates (-0.06) across the CEE region in 1995, according to the WGI. Despite its improvement in anti-corruption performance during the early transition years though, it still registered, along with Poland, the lowest estimate within the region just on the eve of EU accession (0.22). It continued to improve its control of corruption indicator after accession, reaching 0.48 in 2014, and placing itself among the countries with the largest positive change in anti-corruption performance. Despite significant fluctuations throughout years, Lithuania has generally improved on its control of corruption: in the period 2011-2014, corruption fell in the ranks of the country's most pressing issues by 20 percent.⁵⁸⁴

⁵⁸⁴ Lithuanian Map of Corruption 2014, cited in Freedom House, *Nations in Transit Report 2015*.

The evidence drawn from the following within-case analysis suggests that the reforms that the Lithuanian governments adopted resulted in the overall strengthening of the country's institutional anti-corruption framework. Reforms were targeting to meet international standards as many were implemented during the EU pre-accession period. They also addressed some of the most stringent 'loopholes' but many that allowed corrupt practices to flourish in the 1990s and early 2000s were left unaddressed and carried through to after accession. Starting 2009, salient institutional weaknesses were addressed by a pro-reform coalition. Reforms particularly addressed improving monitoring and oversight mechanisms. The Special Investigation Bureau (STT) in this regard became the only truly independent institution in the CEE region to investigate corruption in the public sector. These later improvements explain Lithuania's slow but steady improvement of its anti-corruption performance.

Early transition period (1990s-1997)

Despite the late adoption of a more comprehensive national anticorruption strategy, Lithuania had developed a strong legislative framework that addressed control of corruption in the 1990s. Amongst salient legislative acts related to control of corruption, it passed the 1996 Act on Declaration of Property and Income of Residents, the 1997 Act on Adjustment of Public and Private Interests in the Public Service, the 1997 Act on Money Laundering, the 1997 Act on Control of the Financing of Political Campaigns, the 1999 Public Procurement Act, and more recently, the 2000 Amendments

to the Criminal Code.⁵⁸⁵ More intensive progress in preventing and containing corruption is noted in its pre-accession period starting 1997/98 when Lithuania established the Special Investigation Service (STT), the Parliament approved a National Anti-corruption Strategy, and numerous legislative reforms were passed as part of the EU enlargement process.

In this context, the 1996 Act on Procedure for Drafting Laws and Other Legal Rules required that laws governing economic activity to be evaluated in terms of their potential effect on corruption before being discussed by the government. To strengthen the procedure, starting 2001 every draft was to be discussed only after the remarks and recommendations of the Advisor on Corruption and Customs Issues were considered.⁵⁸⁶

Lithuania adopted in the 1990s a comparatively advanced legal framework that regulated conflict of interest and stipulated comprehensive provisions regarding the declaration of property and income. These still apply today to almost the entire population, and are considered to have been key in the resignation of high-ranked political figures in trials of corruption cases. In this context, the 1997 Act on the Adjustment of Public and Private Interests in the Public Service⁵⁸⁷ regulates conflict of interest⁵⁸⁸ and addresses politicians and public servants at all levels when holding public office. The 1999 Civil Service Act addresses specifically the civil servants by clarifying potential incompatibilities and more conflict of interest provisions. In case of violations, public officials may be dismissed, reduced in rank or exposed to harsher penalties defined

⁵⁸⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁸⁶ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁸⁷ Act no. VIII-371 On the Adjustment of Public and Private Interests in the Public Service, July 1997.

⁵⁸⁸ Defined as a situation where “an official, when discharging his duties or carrying out instructions, is obliged to make a decision or participate in decision-making or carry out instructions relating to his private interests,” cited in Open Society Institute, *Monitoring the EU Accession Process*.

by the Act. In addition, the Statute of the Parliament regulates conflict of interest for members of parliament. The Parliament may impeach ministers in case of violations.⁵⁸⁹

The Act on Adjustment of Public and Private Interests⁵⁹⁰ also requires annual financial disclosure by a vast range of elected and appointed officials and their spouses.⁵⁹¹ Moreover, presidential, parliamentary, and local administration candidates must make their assets and income declarations public before elections.⁵⁹² The declarations of assets and income as well as the private interest declarations of the President, ministers, and other central administration high-rank officials are available to the public. The declarations on income and assets are under the management and supervision of the Tax Inspectorate while the private interest declarations are under the monitoring and supervision of the Chief Official Ethics Commission (COEC).⁵⁹³ The Parliamentary Commission on Ethics and Procedures as well as the Chief Institutional Ethics Commission (CIEC) both monitor any potential conflicts of interest and infringements of these acts on behalf of MPs, and consequently inform the Parliament. Yet, there are no effective mechanisms put in place to monitor potential infringements. The coordination of activities between the different institutions lacks effectiveness as well.⁵⁹⁴

Since the early transition years, immunity from criminal prosecution was a special privilege of the elected officials. It could be removed only through impeachment voted by a three-fifths parliamentary majority at the initiative of the Prosecutor General. Immunity

⁵⁸⁹ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁹⁰ Freedom House, *Nations in Transit 2003-2004 Reports*.

⁵⁹¹ Open Society Institute, *Monitoring the EU Accession Process*, Freedom House, *Nations in Transit 2003-2004 Reports*.

⁵⁹² Freedom House, *Nations in Transit 2003-2004 Reports*.

⁵⁹³ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁹⁴ European Commission, *Anti-Corruption Report 2014*.

can be lifted by a simple majority vote in Parliament.⁵⁹⁵ The same holds for the Prime Minister and the members of Government. GRECO criticized the immunity provisions despite corresponding to the Council of Europe recommendations: the fact that one person's immunity might need to be lifted several times within a single criminal proceeding tergiversated significantly the overall process of prosecution.⁵⁹⁶

There was no centralized institutional framework dealing specifically with corruption in the early 1990s. The main bodies however were COEC, the police and prosecution offices, financial institutions addressing money laundering, and the Ombudsman's Office. COEC, in this context, is one of the first established key anti-corruption institutions to monitor and avert breaches of institutional ethics, supervise public and private interest regulations in the civil service, and control certain lobbying activities. The head of COEC is nominated by the Speaker of Parliament and approved by Parliament. The Prime Minister, the Speaker of Parliament, the Chairman of the Supreme Court, and the President of the Association of Municipalities designate separately one of the four remaining members of the Commission for a five-year term.⁵⁹⁷ COEC reports on an annual basis to the Parliament. It can initiate investigations and provide recommendations for further legal action. Initially, the work of the Commission was seen as quite effective⁵⁹⁸ considering that two ministers resigned in 2000 and 2001, and several municipal offices were penalized partly as a result of the Commission's investigation.⁵⁹⁹ It does not have the authority to investigate MPs however.

The Ombudsman's Office is another institution dealing with abuses of public

⁵⁹⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁵⁹⁶ GRECO, *Evaluation Report on Lithuania*, 22.

⁵⁹⁷ European Commission, *Anti-Corruption Report 2014*.

⁵⁹⁸ Freedom House, *Nations in Transit Report 2004*.

⁵⁹⁹ Open Society Institute, *Monitoring the EU Accession Process*.

office and bureaucracy by government officials. Since its establishment in 1994, it investigates citizens' complaints and reports annually to the Parliament.⁶⁰⁰ It has no authority over investigations of activities of the President, MPs, and judges. The Office members are appointed for four-year terms and can be dismissed only by parliamentary majority vote. Considering that the number of complaints has grown over the years, Freedom House concludes that the Office “has secured its reputation as a trustworthy institution.”⁶⁰¹ The Lithuania Centre for Human Rights acknowledges that the ombudsmen have a constructive preemptive role. Yet, the fact that their recommendations are not always enforced undermines their capacity.⁶⁰²

The Prosecutor General's Office and the Organized Crime Investigation Service of the Criminal Police are also important institutions in deterring corrupt behavior. The Organized Crime and Corruption Investigation Department was established in 2001 through the reorganization of the Organized Crime and Corruption Investigation (OCCI) Units at district prosecution offices.⁶⁰³ Yet, both institutions are not considered effective deterrents. Courts in this sense highlight the poor quality of police corruption investigations⁶⁰⁴, while GRECO more generally highlighted the “lack of clarity in the division of functions between police investigators and prosecutors during pre-trial investigations.”⁶⁰⁵ Finally, the State Security Department's role in fighting corruption, in particular by assisting other institutions through its provision of information and data

⁶⁰⁰ Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁰¹ Freedom House, *Nations in Transit Report 2004*.

⁶⁰² Conversations with Elvyra Baltutyte, Lithuanian Centre for Human Rights, 23 July 2002, cited in Open Society Institute, *Monitoring the EU Accession Process*, 370.

⁶⁰³ Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁰⁴ GRECO, *Evaluation Report on Lithuania*, adopted by GRECO at the 8th Plenary Meeting, Strasbourg, 4-8 March 2002, 17.

⁶⁰⁵ GRECO, *Evaluation Report on Lithuania*, 16, cited in Open Society Institute, *Monitoring the EU Accession Process*, 368.

processing capabilities, is also highlighted in various anti-corruption assessment reports. The involvement of this institution in deterring corrupt behavior reflects the importance of the problem at the highest levels of government.

Evidence shows that corruption was perceived to be one of the most significant problems in Lithuanian society in the early years of its transition. Customs administration and law enforcement bodies (courts and traffic police) were considered to be the most corrupt institutions throughout the 1990s.⁶⁰⁶ Surveys also expose the executive and the legislature as very corrupt institutions. Public trust in Parliament was exceptionally low in the 1990s. It was the lowest among the other EU candidate countries. Yet, there was almost no evidence of corruption among MPs in the early 1990s.⁶⁰⁷ The European Commission's 2000 Regular Report also highlighted public procurement to be of main concern.⁶⁰⁸ Off-budget state funds represented another area of concern. In this sense, while the state budget was approved by the Parliament, other funds like the Social Insurance Fund, the Mandatory Health Insurance Fund, and Occupancy Fund were not included in the state budget. The activities of these funds lacked transparent mechanisms of management and administration.⁶⁰⁹

This widespread corruption despite the lack of hard evidence is a reflection of the complex process of transition in Lithuania. The establishment of anti-corruption mechanisms was only one component of the state-building process. Yet, Lithuania's anti-corruption framework started being developed comparatively quite early and reflects its

⁶⁰⁶ TI corruption review surveys for 1999-2000, cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁰⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁰⁸ European Commission, *2001 Regular Report*.

⁶⁰⁹ Open Society Institute, *Monitoring the EU Accession Process*.

slowly improving anti-corruption performance towards pre-accession.

Pre-accession period – the Lithuanian anti-corruption agenda (1997-2004)

At the official start of its European integration process, the Commission qualified the fight against corruption in Lithuania “an urgent matter.”⁶¹⁰ In the 1999 Regular Report, control of corruption and the reform of the judiciary are stated to be “the only two caveats to Lithuania’s fulfillment of the Copenhagen criteria.”⁶¹¹ In this context, the EU accession process is considered to have had the most significant impact on the development of the anti-corruption agenda and consequent reforms undertaken in Lithuania.

The 2001 Accession Partnership highlighted priorities such as the passage and implementation of a National Anti-Corruption Strategy, of a new Law on Corruption Prevention, implementation of a Code of Ethics for the Civil Service, and ratification of applicable international conventions. Substantial EU assistance was allotted to support specific anti-corruption reforms. These include the development and implementation of the National Strategy, the reform of the State Security Department to address also control of corruption, and the development of an anti-corruption awareness campaign targeting civil society organizations amongst other.⁶¹² Other EU requirements included the amendment of the Criminal Code, and amendment of the Act on State Control that gave State Control the competence to audit the use of EU funds.

⁶¹⁰ 1997 Opinion on Lithuania’s Application for Membership in the EU, cited in Open Society Institute, *Monitoring the EU Accession Process*, 359.

⁶¹¹ European Commission, *2000 Regular Report*, 15.

⁶¹² Open Society Institute, *Monitoring the EU Accession Process*, 360.

Among the most important legislative achievements in the pre-accession period was the successful formulation of a National Anti-Corruption Strategy and its adoption in 2002. It is considered to be one of the most comprehensive strategies developed by any EU accession candidates.⁶¹³ It envisions preventative, investigatory, and educational measures to be implemented within a time framework of seven to ten years. The Program aims to eliminate the legal loopholes that grant excessive authority to public officials. It also seeks to reduce bureaucracy and regulations by making public officials personally liable for legislating inadequate provisions, regulations, or administrative decisions.⁶¹⁴ The Program can be altered every two years.⁶¹⁵

The institution in charge for monitoring and supervising the implementation of the 2002 National Anticorruption Program was the Special Investigation Bureau (STT). The program's implementation however was behind schedule⁶¹⁶, and the public institutions responsible for the supervision of the program were accused of "lackluster implementation" and of "paying it at best nominal attention."⁶¹⁷ STT in particular was blamed for avoiding to address grand corruption.⁶¹⁸

Driven by EU requirements, important legislation was passed under the umbrella of the National Anti-Corruption Program. In this context, most of the relevant international anti-corruption conventions were ratified in the pre-accession period, and domestic legislation was amended. Also, the Lithuanian Criminal Code criminalizes both

⁶¹³ Open Society Institute, *Monitoring the EU Accession Process*.

⁶¹⁴ Freedom House, *Nations in Transit Report 2003*.

⁶¹⁵ Freedom House, *Nations in Transit Report 2003*; Open Society Institute, *Monitoring the EU Accession Process*.

⁶¹⁶ Freedom House, *Nations in Transit Report 2003*.

⁶¹⁷ Freedom House, *Nations in Transit Report 2005*.

⁶¹⁸ Freedom House, *Nations in Transit Report 2005*.

passive and active bribery, as well as the abuse of office.⁶¹⁹ The definition of an official, in this context, includes anyone working in the civil service plus any other person who carries out tasks representing the state or holds administrative powers. Moreover, any person involved in state, non-governmental or private institutions with analogous powers of public administration is also covered by the definition provided.⁶²⁰ To the existing provisions, the new Criminal Code passed in 2000 adds criminal liability for trading in influence, liability of legal entities, and also extends the concept of civil servant to foreign officials.⁶²¹

More reforms reflecting EU requirements were adopted to address control mechanisms. A three-level system of financial control composed of state, municipal, and internal audit structures of the state sector was implemented in this regard. The State Control represents an independent audit institution that inspects the state budget implementation, use of state and municipal funds and assets, off-budget funds, and EU funds. It reports to the Parliament on an annual basis and publishes its findings online. It is the Parliament however that sets and approves its budget, a practice not truly corresponding to advanced international practice.⁶²² Moreover, the new Act on State Control passed in 2001 strips off its competence to penalize officials in favor of the Parliamentary Budget Committee, transforming it into a supreme audit institution with standard powers.

Moreover, internal audit structures were set up in 2000 in all public institutions both at national and local levels. Also, a central department for harmonization was

⁶¹⁹ Criminal Code, Article 290.

⁶²⁰ Criminal Code, art. 290.

⁶²¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁶²² Open Society Institute, *Monitoring the EU Accession Process*.

established at the Ministry of Finance to formulate coordinated control and audit methodology. In this context, the Commission stated that despite the introduction of a sound legal basis for internal financial control, the internal audit mechanisms are still “far from fully operational.”⁶²³

The Special Investigation Service (STT) is the main specialized anti-corruption institution in Lithuania responsible for prosecution, prevention, and education under the National Anti-Corruption Program. It is considered to be also the only truly independent anti-corruption institution established among the EU candidate countries. It was set up by the Government in 1997, and became independent of the executive only in 2000 as part of preparations for EU accession.⁶²⁴ STT reports to the President and the Parliament. Its director is nominated by the President and approved by Parliament for a five-year term. Moreover, the law prohibits public officials, state institutions, and political parties from interfering in STT investigations.⁶²⁵ The STT Director also cannot interfere with specific investigations carried out by investigation departments of the STT. Finally, STT is the organization responsible for coordinating anti-corruption endeavors among state institutions, but also between them and civil society.⁶²⁶

Because of inadequate measures of corruption but also unclear division of responsibilities between prosecution and police, it was difficult during the pre-accession period to assess the effectiveness of STT.⁶²⁷ Yet, in 2004, three MPs resigned as a result of a corruption investigation led by the STT. These were charged with accepting bribes to ensure the amendment of energy legislation in favor of one prominent business group.

⁶²³ European Commission, *2001 Regular Report*, 84.

⁶²⁴ European Commission, *Anti-Corruption Report 2014*.

⁶²⁵ Open Society Institute, *Monitoring the EU Accession Process*.

⁶²⁶ Open Society Institute, *Monitoring the EU Accession Process*.

⁶²⁷ GRECO, *Evaluation Report on Lithuania*, 9.

The STT director resigned as well in response to accusations of politically motivated case investigation. The scandal sparked discussions about “the involvement of law enforcement in political battles.”⁶²⁸

The Parliamentary Anti-Corruption Commission is another specialized institution that was reformed in 2001. It assesses corruption crimes, analyzes evaluation reports submitted by other institutions, and subsequently makes proposals to the Government and Parliament. Also in 2001, all law enforcement agencies signed the Agreement on Cooperation of Subjects of Operational Activities and Coordination of Operational Activities that smoothens out the procedures for cooperation in investigations.⁶²⁹

The reform of public administration was strongly conditioned by the EU accession process as well, and represented a top priority for the Lithuanian authorities. In this context, the EU has highlighted numerous times the weak capacity of the public administration and its endemic corruption.⁶³⁰ In this sense, reforms ranged from changes to the legal framework to trainings for civil servants.⁶³¹ The most salient acts adopted for the civil service during this period were the Government Act, Civil Service Act, and the Act on Local Governments. As a result of the implementation of the Civil Service Act in 1999, civil service was generally depoliticized. With the exception of high-rank positions (ministers, deputy ministers and department directors), all civil servants must be recruited through open merit-based competition, and cannot be dismissed as it is the case of political appointees. The Act protects civil servants from being forced to take politically

⁶²⁸ Freedom House, *Nations in Transit Report 2005*.

⁶²⁹ Open Society Institute, *Monitoring the EU Accession Process*.

⁶³⁰ European Commission, *Regular Reports*.

⁶³¹ Open Society Institute, *Monitoring the EU Accession Process*, 370.

motivated actions that in exceed their powers. Legislation protecting whistleblowers was not developed during the pre-accession period.

In addition to the conflict of interest and asset monitoring provisions in force from earlier laws, the Act on Public Service stipulates that civil servants may not sit on enterprise boards, represent enterprises, or make contracts with related entities. Up to one year into civil service, they are also not allowed to represent the interests of their former employers.⁶³² In this sense, the participation of civil servants in economic activities is rigorously regulated. The Penal Code states that in case of bribing or abuse of official power, public servants can be fined, denied the right to hold certain professional positions, and sentenced up to eight years of imprisonment. The July 2003 amendments to the Law on State Service expand penalties and can hence prohibit state service for three years to civil servants who abuse their official power or are found guilty of ethical misconduct.⁶³³ The amendments were urged by numerous corruption scandals during the process of land restitution uncovered in 2003. A major scandal in the same period involved the President of Lithuania who was found to be tolerating “his advisers' undue interference in other public institutions, including privatization agencies.”⁶³⁴

In parallel to the reform of conflict of interest legislation, numerous connections between politics and business were being revealed. The most concerning situation related to state-owned companies, where “old nomenklatura-type appointees” held close ties with national and municipal administration authorities.⁶³⁵ In this sense, there was no comprehensive code of ethics for civil servants elaborated during the pre-accession

⁶³² Freedom House, *Nations in Transit Report 2003*.

⁶³³ Freedom House, *Nations in Transit 2004-2005 Reports*.

⁶³⁴ Freedom House, *Nations in Transit Report 2004*.

⁶³⁵ Freedom House, *Nations in Transit Report 2003*.

period, despite the fact that the National Anti-Corruption Program envisioned the development of one by the end of 2002.⁶³⁶

The party finance legislation in Lithuania is quite advanced by international standards, and has been enacted also during the EU pre-accession period. In this context, the Act on Political Parties and Political Organizations, the 1999 Act on the Funding of Political Parties and Political Organizations, and the 1997 Act on the Control of Political Campaign Funding regulate party funding. It is important to mention that the last two documents were drafted in consultation with EU experts. Moreover, the sources of party funding include party funds, donations from legal entities or individuals, and state subsidies. In this sense, parties are not allowed to receive anonymous or third party donations. Contributions from foreign donors are also strictly regulated. Furthermore, state subsidies are granted to parties that win at least three percent of the vote in national or local elections, and represent only a very small fraction of total party income. It is the State Control institution that monitors how parties make use of their funds coming from the state budget. Yet, there is no act that regulates the maximum party expenditures allowed.

In this sense, supervision of party funding appears to be mostly formal, while political parties can avoid adherence to the existing legal provisions quite simply. Political parties have to make their financial reports and accounts of political campaigns available to the public. Infringements to this regulation might result in the suspension of state funding. Party expenditures however are considered to be much higher than the official statements. Moreover, there is evidence of strong connections between political and business elites. Despite no hard evidence of corruption related to political parties, the

⁶³⁶ Open Society Institute, *Monitoring the EU Accession Process*.

STT believes that corruption in party financing is a salient concern that needs further reform.⁶³⁷

Legislation on lobbying was also adopted in the EU pre-accession period. In this sense, the 2000 Act on Lobbyist Activity stipulates what counts as lobbying activity, defines lobbyists, requires them to officially register with the Central Commission of Service Ethics, as well as asks them to report on their activities.⁶³⁸ The law however does not include professional associations and other groups as lobbying institutions, fact that injects controversy in distinguishing paid lobbying from public policy advocacy. Another concern relates to the fact that the law is considered to “expand the powers of well-organized, narrow interest groups.”⁶³⁹ Also, MPs are not required to reveal their contacts with the lobbyists.⁶⁴⁰ In this context, there is no evidence that the existing lobbying legislation managed to prevent illicit lobbying. Yet, corruption scandals on the eve of EU accession spurred interest in expanding the lobbying legislation to include all activities that exercise influence on policy-makers.⁶⁴¹ To date, no legislative action has been undertaken in this regard.

Public procurement continues to be an area of serious concern. According to STT, corruption occurs in 70 percent of public procurements. At the recommendation of the Commission, a new Law on Public Procurement was passed in 2003 to limit discretionary and subjective decision-making and enhance transparency and responsibility. The law hence puts responsibility on officials not only for procedural violations but also for violations of the principles of public procurement. It also bans acquisitions from a ‘sole

⁶³⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁶³⁸ Freedom House, *Nations in Transit Report 2003*.

⁶³⁹ Freedom House, *Nations in Transit Report 2003*.

⁶⁴⁰ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 4.

⁶⁴¹ Freedom House, *Nations in Transit Report 2005*.

supplier’ and enacts requirements on ‘small purchases’.⁶⁴² Moreover, anyone reporting cases of corruption is entitled to general legal protections.

Evidence shows that on the eve of EU accession, Lithuania’s level of corruption remains high despite a strong legal and institutional framework put in place. The country developed a relatively strong system of checks and balances, but there were still important foci of corruption left unaddressed. The judiciary, parliament, public administration, party financing and public procurement were the ones identified by international assessment reports.⁶⁴³ In this sense, significant loopholes persist that “grant excessive authority to public officials and create conditions ripe for the abuse of power.”⁶⁴⁴ Moreover, insufficient law enforcement is considered one of the factors that hampers better control of corruption.⁶⁴⁵ Also, the existing mechanisms for effective investigation and prosecution of corrupt cases among elected and appointed officials are “applied in a formal or fragmented manner.”⁶⁴⁶ Hence, both domestic and international organizations see corruption as a systemic problem for Lithuania and one of the country’s most salient concerns.⁶⁴⁷

Post-accession anti-corruption developments

Starting with 2009, Lithuania registered important progress in containing

⁶⁴² Freedom House, *Nations in Transit 2003-2004 Reports*.

⁶⁴³ Freedom House, *Nations in Transit 2003-2004 Reports*.

⁶⁴⁴ Freedom House, *Nations in Transit 2003-2005 Reports*.

⁶⁴⁵ Freedom House, *Nations in Transit 2003-2004 Reports*; Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁴⁶ Freedom House, *Nations in Transit Report 2005*.

⁶⁴⁷ Freedom House, *Nations in Transit Report 2005*.

corruption more effectively. The earlier lack of progress is explained to a degree by the poor performance of the STT, which has been criticized throughout the first post-accession years for ineffectiveness in high-profile corruption cases.⁶⁴⁸ Moreover, TI considers lack of accountability and responsibility in public administration, red tape, and wide powers of civil servants to be the three main causes of corruption in Lithuania in early post-accession.⁶⁴⁹

On paper, Lithuania joined the Union with a well-developed legal framework that was in conformity with the major international standards. A lot of the reforms were passed at the recommendation of international organizations. It experienced however major implementation delays on the activities planned under the National Anti-Corruption Strategy that was adopted as a multi-year program in 2002.⁶⁵⁰ Moreover, enforcement was considered inadequate, and state agencies responsible for the implementation process were blamed for negligence and lack of coordination efforts.⁶⁵¹ In 2005, the country's legislative anti-corruption framework consisted of ten laws on prevention and a national anticorruption campaign.⁶⁵² The 2006-2008 Action Plan for the National Anticorruption Campaign that planned the revision of party and campaign financing, lobbying legislation, licensing regulations, and strengthening oversight of the administration of EU funds was largely stalled due to a lack of political will in the legislature.⁶⁵³ In 2008, as a result of an audit of the National Audit Office, the National Anticorruption Program was officially declared a failed one. With only 45 percent of

⁶⁴⁸ Freedom House, *Nations in Transit 2008-2009 Reports*.

⁶⁴⁹ Freedom House, *Nations in Transit Report 2006*.

⁶⁵⁰ Freedom House, *Nations in Transit Report 2007*.

⁶⁵¹ Freedom House, *Nations in Transit Report 2006*.

⁶⁵² Freedom House, *Nations in Transit Report 2006*.

⁶⁵³ Freedom House, *Nations in Transit 2008-2009 Reports*.

policy measures enforced, weak and ineffective implementation and the lack of adequate assessment criteria that prevented proper monitoring and oversight were revealed as the main reasons for this failure.⁶⁵⁴

Only with a new coalition in power in 2009, the national anticorruption program was updated, and Lithuania started experiencing performance progress. The program stipulated clear objectives, tasks, evaluation criteria for anticorruption efforts. It increased the number of e-services to reduce citizen-government interaction, promoted regulatory reform, as well as consolidated the oversight role of the Interagency Anti-Corruption Commission and the STT.⁶⁵⁵ Moreover, the Parliament proclaimed control of corruption as an official priority in 2010 and included numerous anticorruption legislative reforms at the top of its agenda. The most important one adopted was the confiscation of assets deemed not proportional to a suspect's income.

This update represented a stepping-stone for a new national anticorruption program adopted for 2011-2014 that aimed to reduce bureaucracy, introduce e-services, especially for territory planning and construction permits, areas most prone to corruption. It also introduced measures to increase the efficiency of the judiciary and improve central control of public procurements.⁶⁵⁶ Monitoring reports suggest that the implementation of these measures led to a slight decline in corruption over the last recent years. In this sense, corruption fell by nearly 20 percent in the ranks of the country's most pressing problems.⁶⁵⁷ At the same time, the regulatory reforms pushed Lithuania from 27th to 17th

⁶⁵⁴ Freedom House, *Nations in Transit Report 2009*.

⁶⁵⁵ Freedom House, *Nations in Transit Report 2010*.

⁶⁵⁶ Freedom House, *Nations in Transit Report 2012*.

⁶⁵⁷ Vilmorus, "Lietuvos korupcijos žemėlapis" [Lithuanian Map of Corruption] (Vilnius: Vilmorus, 2014), http://www.stt.lt/documents/korupcijos_prevencija_2014/Korupcijozemelapis2014.pdf, cited in Freedom House, *Nations in Transit Report 2015*.

place in the World Bank's Doing Business rankings.⁶⁵⁸ Moreover, for the first time in several decades, more Lithuanians are optimists about potentially decreasing corruption.⁶⁵⁹

Conflict of interest legislation has experienced positive amendments after accession as well. The obligation to declare private interests was extended in 2005 to also cover chairpersons and deputy chairpersons of political parties despite not holding any position in state service. These declarations are made public on the COEC's website. Incomplete declarations however represent still an important concern.⁶⁶⁰ The European Commission has recommended in this regard, strengthening COEC's mandate by improving the methodology for checking declarations of conflict of interest by elected and appointed officials, monitoring infringements, and enforcing dissuasive sanctions.⁶⁶¹

Financing of political parties received some attention after accession as well but is still considered an important area of concern. To lessen political costs, corruption, and illegal party financing during electoral campaigns, the Parliament banned in 2009 political commercials on radio and television as these two communication means absorb the bulk of campaign funds. Only state budget funds are to be used for candidate advertising during election campaigns. Still, the legislation passed contains serious flaws, according to Freedom House, and the mechanisms for ensuring compliance and transparency are weak.⁶⁶² In 2011, the parliament prohibited legal entities and individual donations to political parties. Individual donations are now only allowed during elections.

⁶⁵⁸ "Lietuva pateko tarp 20 palankiausių verslui valstybių pasaulyje" [Lithuania ranked among 20 most favorable countries to do business], Balsas.lt, 29 October 2013, <http://www.balsas.lt/naujiena/759692/lietuva-pateko-tarp-20-palankiausiu-verslui-valstybiu-pasaulyje>, cited in Freedom House, *Nations in Transit Report 2014*.

⁶⁵⁹ Freedom House, *Nations in Transit Report 2015*.

⁶⁶⁰ Freedom House, *Nations in Transit 2006-2007 Reports*.

⁶⁶¹ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 12.

⁶⁶² Freedom House, *Nations in Transit Report 2009*.

This is expected however to upsurge the prospects for illegal donations.⁶⁶³ The Commission recommends further reform of the legislation on political parties to ensure adequate information flows regarding the sources of funding, and to strengthen the monitoring process of party revenues and spending.⁶⁶⁴

Until 2009, there were no major reforms in public procurement despite being considered one of the most corrupt areas in Lithuania. Officials benefit from extensive discretionary powers in deciding on the procurement criteria and evaluating tender offers.⁶⁶⁵ In 2009 the government approved a public procurement strategy for 2009-2013 to improve the system. It promotes more transparency, effectiveness and competition.⁶⁶⁶ In this context, purchasing organizations have to procure at least half of the total value of public bids electronically. The PPO also started publishing all reports and decisions of purchasing organizations online since 2010.⁶⁶⁷ Also, by amending the Law on Public Procurement in 2012, major changes were introduced: direct tender awards can be granted only with the authorization of PPO, a Central Purchasing Organization was created to centralize certain tenders, and tender board members have to sign declarations of impartiality. Yet, numerous weaknesses remain: there are no penalties for failing to declare potential conflicts of interest, heads of public institutions are not held personally liable for procedural violations, the broad definition of confidentiality in public procurement may limit transparency and facilitate abuse, small-value tenders do not need to be published, and there is no common guidance on early-warning mechanisms to help

⁶⁶³ Freedom House, *Nations in Transit Report 2012*.

⁶⁶⁴ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 12.

⁶⁶⁵ Freedom House, *Nations in Transit Report 2006*.

⁶⁶⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 4.

⁶⁶⁷ Freedom House, *Nations in Transit Report 2011*.

detect corruption in procurement.⁶⁶⁸ As a result, corruption in public procurement is still a key issue and a major area of concern.⁶⁶⁹ In this regard, the Commission recommends revising the PPO's monitoring capacity and developing further prevention mechanisms within contracting organizations to assist uncovering corruption at various phases of procurement.⁶⁷⁰

Revising the regulatory system was under the focus of the authorities as well. In this context, an in-depth revision of the business inspection procedures and its underlying mechanisms was launched in 2009. The revision aimed to avert abuse of power, excessive interferences, and unfounded penalties for the economic agents. In this sense, in 2010 government authorities decided to cut down on the number of laws regulating business activity by 25 percent by the end of 2011.⁶⁷¹

In light of the institutional framework, STT continues to be considered the strongest and most independent anti-corruption institutions in Lithuania. As a result of a controversial high-profile investigation that led STT to an open conflict with the Parliament in 2004, the institution took a more careful approach to the cases it examined in early post-accession years. This fact triggered a lot of subsequent criticism.⁶⁷² Backed up by open presidential support however, the situation changes in 2009. The law enforcement authorities, and STT in particular, are urged to take action against cases of political corruption.⁶⁷³

On the one hand, the number of investigations on high-profile cases has increased

⁶⁶⁸ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 5; Freedom House, *Nations in Transit Report 2013*.

⁶⁶⁹ Freedom House, *Nations in Transit Report 2015*.

⁶⁷⁰ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*, 11.

⁶⁷¹ Freedom House, *Nations in Transit Report 2011*.

⁶⁷² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

⁶⁷³ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

as a result, and led to numerous arrests of top-level officials both at national and municipal levels.⁶⁷⁴ According to STT, 35 percent of its investigations were launched based on information received through their hotline. In this sense, individuals reporting cases of corruption are entitled to general legal protections.⁶⁷⁵ Moreover, the Parliament adopted in late 2014 a law that protects whistleblowers in investigations.⁶⁷⁶ On the other hand, STT reviews and recommendations led to two presidential vetoes: one, to a proposed amendment to the Law on Public Procurement to exempt political parties from rules on public procurement, and second, to a proposed forest law that lacked appropriate measures to prevent abuse of authority.⁶⁷⁷ In this regard, STT recommendations are generally well accepted and implemented.⁶⁷⁸ More generally, as a result of more active investigative and law enforcement activity, the follow-through on high profile cases has steadily increased starting 2009 and was noticed in subsequent assessment reports.⁶⁷⁹

COEC's role in preventing and controlling corruption decreases after accession. That is due to budgetary issues the institution experienced during the financial meltdown but also increasing powers granted to STT. In this sense, the European Commission assesses COEC's effectiveness as lacking "sufficient capacity to fulfill its mission in terms of monitoring, analysis and follow-up on findings", and "it cannot ensure compliance with conflicts of interest and lobbying laws and investigate violations without greater involvement of other national and municipal institutions."⁶⁸⁰

⁶⁷⁴ Freedom House, *Nations in Transit 2011, 2013, 2015 Reports*.

⁶⁷⁵ Freedom House, *Nations in Transit Report 2011*.

⁶⁷⁶ Freedom House, *Nations in Transit Report 2015*.

⁶⁷⁷ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

⁶⁷⁸ Freedom House, *Nations in Transit Report 2007*.

⁶⁷⁹ Freedom House, *Nations in Transit 2010-2014 Reports*.

⁶⁸⁰ European Commission, *Anti-Corruption Report 2014*, 8.

After accession, Lithuania registered important progress in containing corruption. In the first years after accession, anti-corruption focus has shifted from low-tier administrative corruption to rampant political corruption. In the period 2005-2008, serious corruption accusations were brought against top officeholders at both municipal and national levels as a result of reforms implemented before EU accession. These included violations of public procurement procedures, abuses of public office, and conflict-of-interest infringements. These coincide with the pre-existing legal loopholes. This period witnessed greater openness in exposing and investigating cases of grand corruption, yet there was generally little follow-through to accusations up until 2008.⁶⁸¹ Starting with 2009, the new right-wing coalition government has introduced important reforms that, for the first time, led to a steady improvement in the country's anti-corruption performance. Monitoring and oversight mechanisms were strengthened.

In sum, corruption still represents an important problem in Lithuania despite the extensive legal framework the country has developed throughout the years. The main foci of corruption continue to be the legislature, the judiciary, the police, and the local administration.⁶⁸² TI in this regard draws attention to the weak administrative capacity and calls on the government to work on controlling corruption more efficiently by “implementing more controls in lobbying activities, better monitoring conflicts of interest, [and] increasing accountability in the public sector.”⁶⁸³ The European Commission praises the commitment proven to combat corruption but also highlights the

⁶⁸¹ Freedom House, *Nations in Transit Report 2009*.

⁶⁸² Freedom House, *Nations in Transit Report 2015*.

⁶⁸³ Freedom House, *Nations in Transit Report 2015*.

need to work on the implementation of existing provisions, and reinforce the independence and effectiveness of anti-corruption institutions.⁶⁸⁴

The empirical analysis of the Lithuanian case finds evidence that supports the first hypothesis put forward in this study. The reforms that the Lithuanian governments adopted before accession resulted in the overall strengthening of the country's institutional anti-corruption framework. They also addressed some of the 'loopholes.' Yet many that allowed corrupt practices to flourish in the 1990s and early 2000s were left unaddressed and carried through to post-accession. Lithuania in this regard aimed to eliminate the pre-existing legal loopholes that granted excessive authority to public officials. But like most of the other countries in the region, its first strategies experienced heavy implementation delays, and enforcement was considered inadequate.

Political parties, law enforcement agencies, public administration, the parliament, and procurement were the main loci of corruption in Lithuania before accession. The ones that are still considered important sectors affected by corruption today are the legislative process, local governments, public procurement, and law enforcement. These are the areas that experienced fewer effective reforms before accession and where loopholes still persist. Hence, loopholes in the institutional designs reflect the remaining foci of corruption after accession.

7.3. SLOVENIA

Slovenia's international rankings on corruption indicate that it is one of the least

⁶⁸⁴ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

corrupt countries in the CEE region.⁶⁸⁵ Existing statistics on criminal proceedings as well as international expert assessments suggest that at least until EU accession, corruption was not a serious problem in Slovenia.⁶⁸⁶ It is also one of the most active states in the development of its anti-corruption framework. Its institutional design was shaped over the last twenty-five years, and is fully harmonized with the requirements of international conventions on corruption. According to the most recent EU Anti-Corruption Report (2014) however, Slovenia's anti-corruption performance is in decline because of lack of prosecutions "amidst allegations and doubts about the integrity of high-level officials."⁶⁸⁷ This negative trend in public perception and international rankings started immediately after its EU accession. Both domestic public opinion as well as domestic experts consider that the level of corruption, in fact, was on the increase already in 1999.⁶⁸⁸

Early transition period (1990s-2001)

In 1991 Slovenia declares itself independent from the former Yugoslav Republic, and shortly after, the country undergoes substantial reforms that make it a frontrunner in European integration among its CEE neighbors.⁶⁸⁹ Few reforms, as to be discussed below, were undertaken to specifically address corruption. OSI's EUMAP Report however, after an extensive assessment of the transition period concludes that,

"...while there is little evidence of serious corruption in any particular area, the weakness of

⁶⁸⁵ TI, CPI Slovenia, <http://www.transparency.org>; World Bank, *World Governance Indicators 1996-2015*.

⁶⁸⁶ Open Society Institute, *Monitoring the EU Accession Process*, Chapter Slovenia.

⁶⁸⁷ European Commission, *Anti-Corruption Report 2014*, 12.

⁶⁸⁸ Slovenian Institute of Social Sciences, "Awareness of Corruption in Slovene Society – Opinion Poll Survey 1990–1999," cited in GRECO, *Evaluation Report on Slovenia*, adopted by the GRECO at its 4th Plenary Meeting, 12-15 December 2000, 4.

⁶⁸⁹ European Commission, *Regular Report*, years 1998-2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 575.

institutions of enforcement and oversight combined with certain aspects of cultural legacy may create an environment vulnerable to corruption”⁶⁹⁰.

Despite the lack of hard evidence that corruption might pose a threat to the Slovenian public realm, the weakness of institutional anti-corruption mechanisms should be of major concern, according to the OSI’s assessment. This section hence analyzes the reforms undertaken in Slovenia in the transition period, as well as the potential legal and institutional weaknesses that may have led to an increase in corrupt practices in the present.

During the 1990s Slovenia had neither a national anti-corruption strategy nor a central institution responsible to manage anti-corruption efforts, according to the first GRECO 2000 Evaluation Report.⁶⁹¹ The country’s legislation on state financial control however was already relatively advanced for the CEE region. Institutions of external control initially included the Court of Audit (COA), which began its activity in 1995 with the purpose of auditing the state budget, and other public finances.⁶⁹² The Court could choose freely who to audit but it had to take into consideration the suggestions of the legislative and the executive, according to the Court of Audit Act.⁶⁹³ The findings of the Court are open to the public. Also, at least once a year, the institution reports to the Parliament.

Political party financing is also under the competence and supervision of the COA. Despite strict and detailed regulations on financing, parties can easily bypass them. At the same time, no significant sanctions for violations of these rules have resulted from

⁶⁹⁰ Open Society Institute, *Monitoring the EU Accession Process*, 575.

⁶⁹¹ GRECO, *2000 Evaluation Report on Slovenia*.

⁶⁹² Court of Audit website <<http://www.sigov.si/racs/druge00.htm>>.

⁶⁹³ Court of Audit Act, *Official Gazette*, 11/2001.

COA's supervision and reporting to Parliament. Hence, despite being independent both formally and financially, COA's conclusions and findings are not used effectively by the legislative, according to the OSI assessment report.⁶⁹⁴ In this sense the European Commission has recommended increases in staff and strengthening the independence of COA's auditors, measures that were further reflected in the new Act on the Court of Audit that was passed in 2001. In this context, apart from budget inspection and the COA, there were no all-encompassing oversight mechanisms for the prevention of corruption before the EU accession process started for Slovenia.⁶⁹⁵

Internal control mechanisms as part of the system of public administration also started being established only at the end of the 1990s. According to the 1999 Act on Public Finance, all public institutions receiving budget funds had to implement a system of internal control and revision as well as a system of procedures and responsibilities for all public servants.⁶⁹⁶ In 2001, however, the EU suggested that the recently established internal control mechanisms "should be improved."⁶⁹⁷

Police and prosecutors are two other institutions responsible for the investigation of corruption cases. The police, in particular, was significantly restructured in 2000. Special anti-corruption divisions were set up to facilitate investigations and were given broad responsibilities.⁶⁹⁸ These two institutions, however, are considered to be ineffective, sensitive to political pressure, and suffering from lack of independence,

⁶⁹⁴ Open Society Institute, *Monitoring the EU Accession Process*.

⁶⁹⁵ Freedom House, *Nations in Transit Report 2003*.

⁶⁹⁶ Act on Public Finance, *Official Gazette*, 79/1999.

⁶⁹⁷ European Commission, *2001 Regular Report*, 86.

⁶⁹⁸ D. Kos, "The Setting up of Special National Services for the Fight Against Corruption – Slovenia's Point of View," in Open Society Institute Slovenia, *Corruption in Central and Eastern Europe at the Turn of Millennium – A Collection of Essays* (Ljubljana, 1999), 129-135.

particularly in high-level cases of corruption⁶⁹⁹. The 2000 GRECO Report, in this regard, criticized the “unclear division of responsibilities between the police, prosecutors, and investigating judges: cooperation in criminal proceedings appears to depend mostly on good personal contacts between the police and prosecutors.”⁷⁰⁰ GRECO findings also suggested that there are no clear selection and promotion criteria for the prosecutors who find themselves at the full discretion of the Ministry of Justice.

During the beginning of the EU negotiations process, international institutions recommended the Slovenian government to amend its 1995 Penal Code and improve its system of investigation of organized crime and corruption. The Law on Penal Procedures was amended in 1998, and the penal code in 1999, to align the Slovenian legislation to the existing European standards in the spheres of money laundering, corruption, and computer hacking.⁷⁰¹ Early transition legislation aimed at containing corruption and organized crime also includes the Law on Money Laundering and the code of obligations, both adopted in 2001.⁷⁰² In this sense, Slovenia’s money-laundering legislation is harmonized with the *acquis communautaire*. The Government established the Office of Money-Laundering Prevention (OMLP) in 1995 as a unit of the Ministry of Finance. According to this institution, the number of dubious transactions was on the increase: in 2000 OMLP investigated 95 cases of money-laundering summing up to 49.5 million euros. According to the Office, “money-laundering was connected in particular to all kinds of illegal trafficking, as well as to different forms of corruption and tax fraud.”⁷⁰³

⁶⁹⁹ Open Society Institute, *Monitoring the EU Accession Process*, 590; GRECO, *Evaluation Report on Slovenia*, 12.

⁷⁰⁰ GRECO, *Evaluation Report on Slovenia*, 13, cited in Open Society Institute, *Monitoring the EU Accession Process*, 590.

⁷⁰¹ Freedom House, *Nations in Transit Report 2003*.

⁷⁰² Freedom House, *Nations in Transit Report 2003*.

⁷⁰³ “Primerov pranja denarja je vse več” [The number of cases of money laundering is increasing], Delo,

Slovenia is part of GRECO, and it has ratified the Criminal Law Convention on Corruption as well as the OECD Convention on Combating Bribery of Public Officials in International Business Transactions.⁷⁰⁴ In this regard, the bribery legislation in Slovenia was fully harmonized with the existing international standards already at the end of the 1990s. Active and passive bribery, as well as traffic of influence were declared illegal in the public and private sectors. Also, the Act on the Responsibility of Legal Persons introduced criminal responsibility of legal persons in cases of corruption crimes.⁷⁰⁵ Also, according to the Code of Criminal Procedure, it is a criminal offence, which is punishable with three years of imprisonment for public officials and functionaries who do not disclose criminal offences that they are aware of.⁷⁰⁶

Despite no direct evidence that corruption might pose a threat to the Slovenian public realm, the weakness of institutional anti-corruption mechanisms should be of major concern, according to the OSI's assessment. That is because Slovenia is a rather small country where extensive personal connections may easily integrate few private interests at the expense of broader public interests. Also, there is evidence that "informal networks, connections and acquaintances" are critical ties in Slovenia that open many avenues for corruption. Additionally, these close interactions "may give rise to networks of clientelistic or nepotistic social relationships that are corrupt but not characterized by direct exchanges of money or benefits."⁷⁰⁷ According to the GRECO 2000 Evaluation Report,

27 March 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 591.

⁷⁰⁴ Open Society Institute, *Monitoring the EU Accession Process*, Chapter Slovenia.

⁷⁰⁵ Act on the Criminal Liability of Legal Persons, *Official Gazette*, 59/1999, 12/2000, cited in Open Society Institute, *Monitoring the EU Accession Process*, 584.

⁷⁰⁶ Code of Criminal Procedure, *Official Gazette*, 63/94, 72/98, cited in Open Society Institute, *Monitoring the EU Accession Process*, 584.

⁷⁰⁷ Open Society Institute, *Monitoring the EU Accession Process*, 579.

“Slovenia is a small country and this can bring with it some degree of permissiveness, tolerance or even a certain endogamy among officials serving in different institutions. The GET observed that there seemed to be more reliance on personal relationships among State officials and feelings of mutual trust and confidence than on a sound constitutional approach of “checks and balances” ... which is essential in the fight against... corruption.”⁷⁰⁸

Moreover, in two consequent Regular reports of the European Commission, it is noted that preventing conflict of interest situations had to become a priority for Slovenia before the EU accession.⁷⁰⁹ Rules on conflict of interest and asset declaration existed also in the pre-accession period (such as mechanisms included in the Law on Workers in State Organs, 1990; and the Act on Incompatibilities of Holding Public Office with a Profit-Making Activity, 1992) and applied in different ways to only some categories of public officials.⁷¹⁰ The Incompatibility Act prohibits any profit-making activities and receipt of advantages by functionaries. It applies to members of the executive at national and local levels, members of the municipal councils, judges of the COA, common civil servants, as well as to their immediate relatives.⁷¹¹

In 1994, the Slovenian government implemented also an asset disclosure system for public officials. A special parliamentary commission, in this context, was responsible to check the asset declarations until 2004 when this competence was passed onto the Commission for the Prevention of Corruption (CPC). Senior officials, however, oftentimes did not submit asset declarations to CPC as requested by the Incompatibility Act⁷¹². Existing provisions hence on conflicts of interests and assets disclosure, as initially designed, were not effective as “there are no real sanctions for violation, and the

⁷⁰⁸ GRECO, *2000 Evaluation Report on Slovenia*, 11.

⁷⁰⁹ European Commission, *Regular Report*, years 2000-2001.

⁷¹⁰ Freedom House, *Nations in Transit Report 2003*.

⁷¹¹ Act on Incompatibilities of Holding Public Office with a Profit-Making Activity, *Official Gazette*, 49/1992, 10/1992, cited in Open Society Institute, *Monitoring the EU Accession Process*, 584.

⁷¹² Open Society Institute, *Monitoring the EU Accession Process*, 596.

provisions appear to allow clear abuses of conflict of interest situations in practice.”⁷¹³

To conclude on the first decade of Slovenian transition, it is safe to say that there is no hard evidence that corruption was a serious problem during the 1990s. At the same time, prevention, prosecution, and enforcement mechanisms that were established were quite vulnerable, institutions of supervision seemed to be ineffective, and conflicts of interest were widespread.

Pre-accession period – the Slovak anti-corruption agenda (2001-2004)

In 1998 Slovenia started its accession negotiations with the EU. Corruption in this process was not underlined as a potential problem for the Slovenian public life. As stated in the Commission’s 2000 Regular Report, “According to the available statistics and reports, problems of corruption are relatively limited in Slovenia.”⁷¹⁴ According to the OSI’s accession assessment report however, the fact that the EU has not applied any considerable pressure on the Government regarding the lack of corruption legislation is the main reason why the government has undertaken so few legislative initiatives until the early 2000s.⁷¹⁵

Anti-corruption policy became a priority only in 2001 when the Slovenian Government established a Coordinating Commission for Combating Corruption at the recommendations of the Council of Europe. This first institution however was not independent of the Government. It included representatives of the executive, the Supreme

⁷¹³ Open Society Institute, *Monitoring the EU Accession Process*, 573.

⁷¹⁴ European Commission, *2000 Regular Report*, 16.

⁷¹⁵ Open Society Institute, *Monitoring the EU Accession Process*.

Court, State Prosecutor's Office, Court of Audit and the National Review Commission.⁷¹⁶

Also in 2001, the Government established an Office for the Prevention of Corruption (OPC). Directly responsible to the Prime Minister, it was in charge of drafting anticorruption measures as well as investigating the actual size of official corruption.

One of its initial achievements was the formulation of the first legal definition of the term corruption in February 2002: "Corruption is any violation of an obligatory process due to a directly or indirectly promised, offered, given, accepted, demanded or expected benefit to oneself or to another."⁷¹⁷ OPC also developed that year the Act on the Prevention of Corruption that was adopted by the National Council in 2003. The Law aimed at diminishing the opportunities for corruption but also dealing with the already existing cases. Assisted by Dutch experts, the Office was in charge of designing the first National Anti-corruption Strategy. Passed in 2004, it aimed first of all at corruption prevention.⁷¹⁸ It contained 172 measures "prescribed for the areas of politics, state administration, investigative, prosecuting and judicial bodies, business, nongovernmental organizations, the media, and the general public."⁷¹⁹

The Law on the Prevention of Corruption also put the basis of an independent institution, the Commission for the Prevention of Corruption (CPC), which was meant to replace the OPC.⁷²⁰ Established in 2004, the institution is state-funded but is not subordinated to any state institution. It also does not coordinate its activity with the executive or the legislature. The president of Slovenia appoints its leadership after a

⁷¹⁶ Government Office for European Affairs, "Amendments to the Republic of Slovenia's National Programme for the Adoption of the Acquis by the End of 2002," May 2001, <http://www.gov.si/svez/novosti/npaa_an.htm>.

⁷¹⁷ Freedom House, *Nations in Transit Report 2003*.

⁷¹⁸ Center International, Terms of Reference 2001, Fight against Corruption, Pre-accession programmes, September 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁷¹⁹ Freedom House, *Nations in Transit Report 2015*.

⁷²⁰ Freedom House, *Nations in Transit Report 2004*.

thorough recruitment process under the guidance of a selection board. The chief commissioner's mandate is six years, and the two deputies' – five years each. Two terms in office is the maximum allowed.⁷²¹ Initially CPC struggled with serious difficulties, such as financial problems, and official threats of abolishment stemming from politicians in 2004 and 2005.⁷²²

CPC's purpose is to ensure that functionaries do not abuse public office for private gains. The Law on Access to Public Sector Information, adopted in 2003, will additionally help facilitate this goal. Due to its achievements and effective enforcement of the Law on Prevention of Corruption, it is considered to be Slovenia's most trustful anticorruption watchdog.⁷²³ Furthermore, in 2010 its mandate was expanded, and it now includes also oversight of lobbying, whistleblowers protection, and integrity of public servants.⁷²⁴ Moreover, an electronic asset monitoring system was put in place which now allowed for more effective cross checking of declarations data.

Considering the high-level corruption scandals that were uncovered in the beginning of the 2000s, the Slovene civil society became highly intolerable of official corruption. This fact was picked up on the eve of the 2004 parliamentary elections when numerous politicians launched anti-corruption campaigns and used anticorruption discourses to win additional votes.⁷²⁵ As a follow up, more anticorruption measures were introduced in 2004. In this sense, an administrative council was established “to oversee the politically unbiased selection of senior civil servants.”⁷²⁶ The council is hence

⁷²¹ Freedom House, *Nations in Transit Report 2015*.

⁷²² Freedom House, *Nations in Transit Report 2006*.

⁷²³ Freedom House, *Nations in Transit Report 2011*.

⁷²⁴ Freedom House, *Nations in Transit Report 2015*.

⁷²⁵ Freedom House, *Nations in Transit Report 2005*.

⁷²⁶ Freedom House, *Nations in Transit Report 2005*.

expected to guarantee a higher level of professionalism among civil servants. The Law on Civil Service was also adopted that establishes stricter disciplinary procedures and enforcement mechanisms, as well as a more transparent mechanism of recruitment and promotion. These reforms build up on earlier major public administration reforms that were passed earlier.

These included the Act on State Administration, Act on Public Agencies, Act on Inspections, Act on Public Employees, and Act on Salaries in the Public Sector.⁷²⁷ Also in this context, a Code of Conduct for civil servants was adopted in 2001 that aims at improving the selection process of civil servants. Competitive public selection procedures are expected to replace the very common political appointments, especially for the higher ranked civil service positions⁷²⁸. Also, according to the new Act on State Administration, the only political positions remain those of the Prime Minister, ministers, the Secretary-General of the government, and one state secretary for each ministry.⁷²⁹ These internal control mechanisms and new regulations introduced in the public administration to prevent corruption still appear to be ineffective. According to the OSI accession assessment report, “an important defect of Slovenian public administration appears to be inadequate internal supervision and control.”⁷³⁰ In this sense, most of the corruption cases in public service are discovered by external agents such as the media or the police rather than by specialized executive bodies.

⁷²⁷ Open Society Institute, *Monitoring the EU Accession Process*, 597.

⁷²⁸ “Vladno kadrovanje pod lupo” [Government’s hiring under scrutiny], Delo, 13 July 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 597.

⁷²⁹ Act on State Administration, Article 17, cited in Open Society Institute, *Monitoring the EU Accession Process*, 597.

⁷³⁰ Open Society Institute, *Monitoring the EU Accession Process*, 597.

Evidence shows that the pre-accession period was an important phase for the establishment of new or reformed institutions to contain corruption in the public sector. This happened despite corruption not being identified by the Commission as a problem for Slovenia's accession. Institutional loopholes in this regard relate to the capacity and mandate of anti-corruption mechanisms to detect and sanction corrupt behavior.

Post-accession anti-corruption developments

After accession Slovenia has pursued further anti-corruption reforms but also tried to dismantle some records it has previously achieved. Important legislative changes were adopted in 2008-2011 that mainly targeted improved integrity and prevention of corrupt practices, reduction of conflicts of interest, promotion of transparency of lobbying, protection of whistleblowers, and improved criminal law provisions.⁷³¹ In 2011 the Integrity and Prevention of Corruption Act is adopted. It significantly expands the powers and independence of the Commission for Prevention of Corruption (CPC) that acts to “uphold the rule of law through anti-corruption efforts”, as acknowledged also by the Slovenian Constitutional Court.⁷³² The CPC, in this sense,

“conducts administrative investigations into allegations of corruption, conflicts of interest, and illegal lobbying, [...] monitors the financial status of public officials’ wealth, keeps a central registry of lobbyists, undertakes tasks related to the protection of whistleblowers, coordinates the development and implementation of the national anti-corruption action plan, assists public and private institutions in developing integrity plans and monitoring their implementation, develops and enforces preventive measures such as awareness-raising, training, etc., and serves as a national focal point for anti-corruption matters for international organisations and mechanisms.”⁷³³

⁷³¹ European Commission, *Anti-Corruption Report 2014*.

⁷³² European Commission, *Anti-Corruption Report 2014*, 16.

⁷³³ European Commission, *Anti-Corruption Report 2014*, 9-10.

According to the EU Anti-Corruption Report, it is the CPC's "guarantees of stability and independence" that ensure that the institution pursues its investigative and oversight duties successfully and without undue pressure.⁷³⁴ Simultaneously, the Report highlights that the institution cannot be impactful by itself. Internal and external control and oversight mechanisms, the police, prosecution, and the judiciary need to follow up on its findings. This is the case since criminal investigation powers lie with the criminal police, the National Bureau of Investigations, and the prosecutors' office. The Commission's comment hence comes as a reaction to the 2013 resignation of CPC's management in protest against the inadequate external support and lack of effort of authorities to investigate the corruption cases and concerns identified by the CPC.⁷³⁵

In regards to lobbying monitoring in Slovenia, Transparency International qualifies it as "a promising best practice for achieving greater transparency."⁷³⁶ In this sense, the CPC set up a registry for lobbyists, and according to the law, public officials have to report to CPC all contacts they have with lobbyists.⁷³⁷ In practice however, few officials report on their contacts with lobbyists⁷³⁸ while the CPC has limited practical and financial capacity to regulate this field.⁷³⁹ The Commission also recommends that the government strengthen anti-corruption mechanisms in regards to the 30 percent of companies that are state-owned and state-controlled to make sure any undue influences

⁷³⁴ European Commission, *Anti-Corruption Report 2014*, 10.

⁷³⁵ <https://www.kpk-rs.si/en>, cited in European Commission, *Anti-Corruption Report 2014*, 10.

⁷³⁶ Transparency International, "Money, politics, power: corruption risks in Europe" (2012), 28. http://nis.integriteta.si/images/pdf/enis_regional_report.pdf, cited in European Commission, *EU Anti-Corruption Report 2014 - Chapter on Slovenia*, 9.

⁷³⁷ <https://www.kpk-rs.si/en/lobbying>.

⁷³⁸ KPK (2011) <https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/arhiv-kpk-vestnik>.

⁷³⁹ KPK activity report covering 2010-2012. Only one full-time employee is tasked with monitoring lobbying for the entire public sector.

are prevented.⁷⁴⁰ Furthermore, in regards to whistleblowers protection, the CPC also declared that there is still much work to be done to make the existing legislation more effective.⁷⁴¹

According to the EU Anti-Corruption Report, there is also limited progress in improving the existing legislative framework on party financing and electoral campaigns. Despite meeting most international standards, according to the 2007 GRECO compliance report, the rules can be easily bypassed. Moreover, there is no imposing sanctioning system in place, and COA has insufficient supervisory powers. In this context, COA can verify the correctness and legality of the financial reports that parties submit, but it cannot check the origin of funding. Moreover, in infringement cases of the current legislation, “no financial sanctions have been applied to date to any political party.”⁷⁴² In the 2014 GRECO report, it is mentioned that the Council of Europe’s 2007 recommendations on party financing are still not satisfactorily implemented.⁷⁴³ No political consensus on further substantive reforms is partly the reason for this negative assessment.

At the end of 2013, however, both the Political Parties Act and the Elections and Referenda Campaign Act were amended to fully ban corporate donations to political parties. The amendments also include more transparency regulations as well as increased levels of sanctions. According to the Anti-Corruption Report of the EU, “in the case of the latter shortcomings remain in relation to the variety and nature of applicable sanctions

⁷⁴⁰ 2012 National Integrity System in Slovenia, <<http://nis.integriteta.si/publikacija/nacionalni-sistem-integritete-v-sloveniji>>.

⁷⁴¹ European Commission, *Anti-Corruption Report 2014*, 8.

⁷⁴² European Commission, *Anti-Corruption Report 2014*, 8.

⁷⁴³ [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)6_Second_Slovenia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)6_Second_Slovenia_EN.pdf), cited in European Commission, *Anti-Corruption Report 2014*.

and their capacity to deter and ensure high accountability standards.”⁷⁴⁴

Also post-accession, Slovenia has undertaken reforms to ensure enhanced transparency of the public procurement process. In this regard, the government has amended its criminal legislation by introducing new regulations for offences related to public funds mismanagement. The Ministry of Finance also launched in 2007 an online application called “Supervizor” where all documentation related to public procurement is published⁷⁴⁵. The e-procurement portal offers information on financial transactions of all the three branches of government, autonomous state bodies, and local public administration bodies. It monitors in this regard how an average of 4.7 billion euros per year are spent by the public sector. Despite being awarded the UN Public Service Award in 2013⁷⁴⁶, there are still some deficiencies in the performance of this transparency system as well as the timely publication of documentation, according to the EC’s Anti-Corruption Report.⁷⁴⁷

Another rising post-accession concern is the ever-closer informal networks between businesses and politicians.⁷⁴⁸ The CPC has reported that this phenomenon is due to the fact that the vast majority of the banking sector is “at least partially controlled” by state authorities. This subsequently leads to loans being granted according to political criteria.⁷⁴⁹ Despite numerous proposals on behalf of the CPC and COA, no anti-corruption safeguards for the banking sector have been adopted so far. Recent regulations also prohibit politicians holding the position of members of parliament and local elected

⁷⁴⁴ European Commission, *Anti-Corruption Report 2014*, 8.

⁷⁴⁵ The Portal of E-procurement: <http://www.enarocanje.si/?podrocje=portal>.

⁷⁴⁶ www.workspace.unpan.org/sites/Internet/Documents/2013%20UNPSA%20Winners%20Category%201.pdf.

⁷⁴⁷ European Commission, *Anti-Corruption Report 2014*, 11.

⁷⁴⁸ European Commission, *Anti-Corruption Report 2014*, 4.

⁷⁴⁹ Ocena stanja korupcije 2013. Cited in European Commission, *Anti-Corruption Report 2014*, 4.

officials simultaneously.⁷⁵⁰ Yet, GRECO's most recent assessment report highlights that a "widespread culture of integrity is not yet in place and there is a low degree of public confidence in the integrity and performance of elected officials" despite advanced legal regulations put in place.⁷⁵¹

The post-accession period shows that governments have continued to strengthen their institutional designs on anti-corruption. While important loopholes in the legislation are addressed, caveats still remain, especially in the monitoring mechanisms. After accession it is the first time party financing has been raised as a salient issue to be addressed. Yet the reforms implemented do not address the fact that there is no sanctioning system in place for those who infringe the law, and that COA has insufficient supervisory powers to detect violations. Also, while Slovenia has enacted one of the best lobbying legislations in the region, few officials report on their contacts with lobbyists and the CPC has limited practical and financial capacity to regulate this field.

Evidence shows that Slovenia benefits from a relatively advanced legal and institutional anti-corruption framework. Most of the reforms and existing legislation were adopted on the eve of EU accession with the support and influence of the EU and the Council of Europe. The post-accession period has witnessed the rise of the CPC as the main Slovenian anti-corruption watchdog. Due to its effectiveness it was oftentimes under severe attacks on behalf of public authorities. More recently, it benefited from enhanced independence and strengthened oversight powers. Currently however, amidst

⁷⁵⁰ European Commission, *Anti-Corruption Report 2014*, 6.

⁷⁵¹ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)1_Slovenia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)1_Slovenia_EN.pdf), 5-6, cited in European Commission, *Anti-Corruption Report 2014*, 6.

claims of corruption and concerns regarding the integrity of high-ranked officials, elected and appointed, the anti-corruption agenda in Slovenia is experiencing a decline. Finally, if in the 1990s corruption was not perceived to be a serious problem for Slovenia, it is acknowledged by the international institutions that the phenomenon deserves much more attention on behalf of public authorities today.

The empirical analysis of the Slovenian case hence finds partial evidence that supports the hypothesis put forward in this study. The reason for the partial support is that assessment reports do not identify foci of corruption for the transition period. That is because corruption was not perceived to be a problem at all. Moreover, there were no corruption-related prosecutions reported or discovered and therefore it is difficult to assess the magnitude of the phenomenon in the 1990s. It is clear however that there were numerous conflicts of interest, and very close political and economic ties among the elites. The legislative process was non-transparent as well but there was no hard evidence of corrupt practices either to be able to measure the phenomenon. Yet institutional loopholes persisted despite a relatively advanced anti-corruption framework. Prevention, prosecution, and enforcement mechanisms that were established were quite vulnerable, institutions of supervision seemed to be ineffective, and the conflicts of interest legislation was disregarded.

In this regard, the country has established an advanced institutional design for containing corrupt behavior both in the 1990s and the period before it joined the Union. It embedded, however, numerous loopholes that allowed for conflicts of interest to be a frequent occurrence. Over time, it addressed certain loopholes these institutions had previously embedded thus strengthening its overall institutional anti-corruption design.

Meanwhile, certain weaknesses were left unaddressed. These relate mostly to the capacity of institutions to investigate and sanction corrupt practices, as well as enforcement mechanisms more generally.

The legislature, party financing, local governments, state-owned agencies and law enforcement are the areas that were identified as most affected by corruption after accession. Hence, loopholes in the institutional designs left unaddressed before accession reflect the foci of corruption after accession. We are unable to draw conclusions on the early transition period however.

Conclusion

In this chapter we assessed the reform process of institutional anti-corruption designs among the middle group countries as an initial step into testing the first hypothesis. This chapter found evidence that shows that all three cases have established relatively strong institutional designs by addressing existing ‘loopholes’ in their anti-corruption mechanisms before accession. Salient reforms, however, have continued after accession as well. Corruption yet represents a salient problem for all cases in this group today. Furthermore, all cases experience foci of corruption after accession though fewer than before accession. Evidence in this regard is inconclusive for Slovenia. Latvia, currently, experiences corruption mainly in the higher echelons of public administration and the legislative process. Lithuania still struggles with corruption namely in local public administration, the legislative process, law enforcement, and public procurement.

Slovenia foci of corruption are the legislature, party finance, law enforcement, local administration, and state-owned companies.

Evidence shows that these remaining foci of corruption (findings inconclusive for Slovenia) are a result of deficient internal monitoring and oversight checks that were poorly or not reformed at all before EU entry. All three cases however have established strong anti-corruption agencies that particularly in the second half of the 2000s started delivering effective results. Yet despite the proliferation of institutions in these countries meant to fight corruption, and that correspond to the most advanced international standards, the internal checks could be strengthened more. These do not have either the mandate, the resources, or the appropriate sanctioning tools to contain corrupt practices.

8

Assessing Backsliders' Anti-Corruption Designs

In this chapter we turn to the empirical analysis of the design of anti-corruption institutions among the backsliders as a first step to testing the first hypothesis. This chapter finds evidence that shows that all three states, the Czech Republic, Hungary, and Slovakia have established comparatively advanced institutional anti-corruption designs but ones that have significant 'loopholes' embedded. Corruption represented a salient problem in the 1990s for two of the three cases – the Czech Republic and Slovakia. This constitutes a severe phenomenon for all three countries still in 2014.

Moreover, all cases experience an increased number of foci of corruption both before and after accession. The Czech Republic experiences corruption mainly in public administration, the legislature, prosecution, party financing and public procurement. Hungary struggles with corruption namely in public administration, law enforcement and prosecution, party financing and public procurement. Slovakia, the worst performer, faces corrupt behavior in public administration, legislature, judiciary, law enforcement and prosecution, as well as party financing and public procurement. Moreover, a commonly identified trend in all three cases is the existence of alarmingly close ties between political and economic elites.

Finally, evidence shows that the current foci of corruption are a result of deficient internal checks in these realms. Despite the proliferation of institutions in these countries meant to fight corruption, and that seemingly correspond to most advanced international standards, there are no effective or independent oversight mechanisms that actually limit

corrupt practices. Because high-level corruption tends not to be systematically investigated and prosecuted in these countries publicly available evidence of it is limited; however, domestic and international assessment reports conclude that political corruption is a widespread and salient problem.

8.1. CZECH REPUBLIC

In 1995, according to the World Bank WGIs, the Czech Republic started out as the country with the second lowest level of corruption in the CEE region (0.65), only behind Slovenia. When it joined the European Union, however, its level of corruption was worse than the one in 1995 (0.46). It registered less progress than Slovenia, Estonia and Hungary. According to the 2012 estimates, corruption is on the rise again (0.19).⁷⁵² With few exceptions, available anti-corruption indicators suggest that corruption is a salient problem, and that it has worsened after accession. The evidence drawn from the following within-case analysis suggests that the reforms that the Czechs adopted did not result in the strengthening of the country's overall anti-corruption framework. Reforms were targeting to meet international standards but were not contextualized to the Czech reality. The 'loopholes' that allowed corrupt practices to flourish in the 1990s were mostly left unaddressed and carried through to after accession, fact that explains the country's worsening anti-corruption performance.

Early transition period (1990s-2001)

⁷⁵² World Bank, *World Governance Indicators 1996-2014*.

In the 1990s the Czechs had a very weak institutional framework aimed at curbing corrupt behavior. Both the executive and the legislature had no internal checks aimed at monitoring behavior and practices of officials and bureaucrats. The external institutions had very limited powers as well to enforce any sanctions. The law enforcement agencies were plagued by corruption themselves. Hence corrupt behavior was unchecked for most of the transitional period.

Despite the late adoption of an anti-corruption agenda, the Czech authorities had several laws and institutions addressing potential avenues for corruption adopted in the early 1990s. One of them, the Law 238/1992 addressed potential conflict of interest and asset and income declaration.⁷⁵³ According to the Conflict of Interest Act, a small group of highly-ranked public functionaries, and namely members of Parliament, ministers, heads of central administrative agencies had to annually declare their and their spouses' income and assets. Moreover, members of the executive were not allowed to conduct any business activities, hold another job, or simultaneously be MPs. Members of Parliament, similarly, had to disclose any conflicts of interest in the process of their work. In contrast to civil servants, however, they were allowed to engage in various economic activities. This was considered the Act's most serious loophole.⁷⁵⁴ In light of the further 'cartelization' of politics that intensifies after accession, this loophole proves to have had serious consequences on the legislative process.

⁷⁵³ Act no. 238/1992, as amended by Acts no. 287/1995 and 228/1997, cited in Open Society Institute, *Monitoring the EU Accession Process*, 152.

⁷⁵⁴ Open Society Institute, *Monitoring the EU Accession Process*, 154.

More generally, the Act has been criticized numerous times for several other loopholes it displays and the inadequacy of regulations it stipulates⁷⁵⁵. For instance, the definition of conflict of interest “appears to confuse conflict of interest as such with its potential consequences.”⁷⁵⁶ Moreover, false declarations did not trigger any meaningful sanctions for the perpetrators. On the other hand, the parliamentary committee responsible for checking the veracity of the submitted declarations “cannot take action against proven improper conduct.”⁷⁵⁷ No inquiry to check the submitted declarations has taken place.⁷⁵⁸ Hence there were no viable checks established on the activities undertaken by MPs.

Moreover, the institutional framework for financial control and audit operating in the 1990s was considered to be inadequate because it had no sanctioning mechanism.⁷⁵⁹ The Supreme Audit Office (SAO) was established in 1993 and is still responsible for auditing public expenditures, hence indirectly responsible for detecting cases of corrupt practices. Rigorous appointment and dismissal procedures ensure the independence of this institution. Disciplinary proceedings are considered to be “the only potential threat to the SAO’s independence.”⁷⁶⁰ Moreover, neither the executive nor the legislature may request audits. The Office itself chooses the institutions to audit. Its reports are available online. Until 1998, however, governments acknowledged the audit findings but no sanctions were imposed whatsoever. Only with the start of the European integration process, governments started taking action and implementing necessary corrective

⁷⁵⁵ Freedom House, *Nations in Transit 2003-2005 Reports*; Open Society Institute, *Monitoring the EU Accession Process*.

⁷⁵⁶ Open Society Institute, *Monitoring the EU Accession Process*, 152.

⁷⁵⁷ Freedom House, *Nations in Transit Report 2003*.

⁷⁵⁸ Answers from Chamber of Deputies, April 2001, and Senate, July 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 153. Data valid for period until 2002.

⁷⁵⁹ Open Society Institute, *Monitoring the EU Accession Process*.

⁷⁶⁰ Open Society Institute, *Monitoring the EU Accession Process*, 154-155.

measures.⁷⁶¹ Hence, SAO as an institutional check on corruption grew in importance only towards the end of the 1990s when its findings started being followed through.

Inadequate internal control mechanisms are another salient issue that affects the Czech public administration. The lack of internal checks on the executive is also the major finding in SAO's audits. According to the 1999 EU Regular Report, "internal control departments lack functional independence and unified instructions and methodology from the Ministry of Finance."⁷⁶² Legislative reform concerning this issue became a pre-condition for EU accession and allocation of structural funds.⁷⁶³

Among agencies directly responsible for combatting corruption established in the 1990s, we can distinguish the Department for Revealing Corruption and Serious Economic Criminality (UOK). UOK, the main anti-corruption agency, deals with preliminary investigations and surveillance activities for other investigatory agencies, and has similar competences to the criminal police.⁷⁶⁴ According to the OSI assessment report however, the "Department may not possess sufficient autonomy to pursue corruption cases involving high-level politicians."⁷⁶⁵ Moreover, a special police department was established in 2001 that was directly responsible for investigating high-profile cases of corruption.⁷⁶⁶ In this sense, UOK suffers from inter-agency rivalry, and the executive oftentimes puts its independence under question.

Another agency responsible for overseeing suspicious transactions is the Financial Analytical Unit established within the Ministry of Finance in 1996. Despite numerous

⁷⁶¹ Open Society Institute, *Monitoring the EU Accession Process*, 155.

⁷⁶² European Commission, *1999 Regular Report*, 57, cited in Open Society Institute, *Monitoring the EU Accession Process*, 155.

⁷⁶³ Open Society Institute, *Monitoring the EU Accession Process*, 155.

⁷⁶⁴ Open Society Institute, *Monitoring the EU Accession Process*, 156.

⁷⁶⁵ Open Society Institute, *Monitoring the EU Accession Process*, 156.

⁷⁶⁶ "Czech police set up special department on VIP crime," RFE/RL Newline, 30 July 2002. Cited in Open Society Institute, *Monitoring the EU Accession Process*, 156.

notifications of suspected criminal activity reported to the police, the Unit lacks enforcement capacity, and cannot impose any sanctions.⁷⁶⁷ The Czech Ombudsman Office is another institution that has the capacity to detect and inform about corrupt behavior to higher instances. From all the cases processed in 2001 however, none addressed cases of corruption.⁷⁶⁸

The parliament is not considered to represent a functional and effective anti-corruption mechanism. It is in fact considered part of the problem. Unregulated lobbying, unlimited immunity protecting MPs from prosecution, unsanctioned conflicts of interest make members of parliament and the legislative process highly vulnerable to corruption. In this context, another source of corruption in the Czech Republic is political party financing. Until 2000, there were almost no restrictions on donations to political parties. The only legal requirement was to declare the sources of funding that exceeded 3,333 euros. In 1998, a set of reforms was initiated that led to significant amendments of the Act on Political Parties in 2000, to be reviewed further on. The executive started by interdicting any donations from state-controlled companies in 1998. Further, major increases in state subsidies were passed. This process is considered to have decreased parties' dependence on illegal sources of revenues.⁷⁶⁹

The oversight of party financing was considered at least “generally inadequate.”⁷⁷⁰ Until 1995 parties had to submit financial reports yearly to the Parliament and SAO when the Supreme Court ruled monitoring by SAO to be unconstitutional.⁷⁷¹

⁷⁶⁷ European Commission, *2000 Regular Report*, cited in Open Society Institute, *Monitoring the EU Accession Process*, 156.

⁷⁶⁸ Open Society Institute, *Monitoring the EU Accession Process*, 158.

⁷⁶⁹ Open Society Institute, *Monitoring the EU Accession Process*, 170.

⁷⁷⁰ Open Society Institute, *Monitoring the EU Accession Process*, 173.

⁷⁷¹ Open Society Institute, *Monitoring the EU Accession Process*, 173.

The 2000 amendments to the Act on Political Parties leave the system of supervision of party financing unchanged. According to Transparency International, “The Act... still leave[s] ample room for parties to elaborate tales on the transparency of their finances. This is mainly due to limited auditing functions and controlling mechanisms of party financial reports.”⁷⁷²

The legal framework for state administration is considered to be largely inadequate until the beginning of the 2000s, when a new Civil Service Act had been adopted as a requirement of EU accession.⁷⁷³ In this sense, there were no rules to ensure the stability or independence of the civil service. Merit-based competition was not a requirement when hiring, and there was no legislation that would ban nepotism from the recruitment process. Moreover, politicization of lower level civil service was a regular phenomenon during changes in heads of administrative units. Finally, security of tenure for civil servants was not envisioned in the new Civil Service Act that entered into force in 2004.

Up until 1999, the Czech Criminal Code did not include a definition for the concept of bribe, and as an assessment report puts it, “it was often difficult to distinguish a bribe from a commission.”⁷⁷⁴ The amendments passed in 1999 included a definition of “bribe”, included increased sanctions, and extended the scope of provisions to foreign public officials as well. Hence bribery provisions concerned influences on “any actions

⁷⁷² Cerny P., Clough B., Roztocil A., (2001), “Innovation and Transparency in Political Party Financing in the Czech Republic” Transparency International Czech Republic, cited in Open Society Institute, *Monitoring the EU Accession Process*, 173.

⁷⁷³ Open Society Institute, *Monitoring the EU Accession Process*, 158.

⁷⁷⁴ Open Society Institute, *Monitoring the EU Accession Process*, 151.

connected with matters that are of public interest.”⁷⁷⁵ By the end of the 1990s the bribery legislation became largely compliant with international standards.

In light of this evidence, it becomes clear that the institutional framework that existed in the 1990s was weak enough not to be able to contain corruption in public institutions. The identified loopholes mostly correspond to the foci of corruption that existed in that period, and namely public administration, legislature, judicial system, party financing and public procurement. We notice also that with the 2000 reform of the party finance legislation, the issue stopped from being considered a problem, as assessment reports claim.⁷⁷⁶ Yet, the unregulated lobbying, inadequate immunity rules for the MPs, and rogue conflict of interest regulations opened up more opportunities for discretionary decision-making and misuse of power. These deficiencies explain why the Czech legislative process was so much affected by corruption. In this context, political officials not only became accomplices in a pervasive process of national asset stripping, but also laid down legislation favorable to specific groups of investors.⁷⁷⁷ Hence we notice strong networks of influence between political and business elites being already created at this stage.

Pre-accession period – the Czech anti-corruption agenda (1998/2001-2004)

⁷⁷⁵ Act no. 69/1999. Cited in Open Society Institute, *Monitoring the EU Accession Process*, 151.

⁷⁷⁶ Open Society Institute, *Monitoring the EU Accession Process*, 136.

⁷⁷⁷ Q. Reed, “Corruption in Czech Privatisation: Dangers and Policy Implications of ‘Neoliberal’ Privatization,” paper to Princeton University-Central European University Joint Conference on Corruption, 30 October–6 November 1999. Cited in Open Society Institute, *Monitoring the EU Accession Process*, 141.

The pressure for reforms coupled with financial assistance led to the formulation of the first national anticorruption program and reformation of institutions handling the investigation and prosecution of corruption.⁷⁷⁸ In this context, the winning Social Democratic Party in the 1998 elections launched the infamous “Clean Hands” anti-corruption campaign. The Government created more inter-ministerial institutions to carry out the anti-corruption policy, where the Ministry of Interior served as the main coordinating institution. In 1999 it approved the Government Program for the Fight against Corruption that aimed at making prosecution bodies more effective and raising public awareness.

Yet, the implementation process was very much tergiversated and with limited progress in the following years. The 1999 Regular Report stated, “An effective policy has not yet been developed.”⁷⁷⁹ The 2000 Regular Report mentioned, “little progress can be reported” in the implementation of the anti-corruption policy.⁷⁸⁰ Also, the Commission concluded that two years in the implementation of the “Clean Hands” anti-corruption campaign, there was still a lack of effective enforcement capacity, qualified staff, and inter-institutional cooperation in the fight against organized crime and corruption.⁷⁸¹

In the light of the EU accession, these criticisms led later to a governmental push for actual reform. In this context, special teams of prosecutors to oversee investigations of serious economic crimes were created, as well as more specialized institutions to fight corruption.⁷⁸² By 2002, the planned reforms in the justice system, changes in criminal law and party funding rules represented the main achievements. A new law on party financing

⁷⁷⁸ Open Society Institute, *Monitoring the EU Accession Process*.

⁷⁷⁹ European Commission, *1999 Regular Report*, 13.

⁷⁸⁰ European Commission, *2000 Regular Report*, 88.

⁷⁸¹ European Commission, *2000 Regular Report*, 106.

⁷⁸² Open Society Institute, *Monitoring the EU Accession Process*.

has become effective in 2001. The new law addresses rules in regards to accepting financial contributions and declaration of financial transactions. While the law is considered to encourage transparency and discourage incentives for corruption, experts draw attention to the fact that party financing from the state budget conflicts with the Constitution's provision that parties must be separate from the state. Moreover, the law has significant 'loopholes' remaining: donations from foreign foundations and political parties are still allowed.⁷⁸³ Concurrently, very important obligations such as the reform of parliamentary immunity, and conflict of interest legislation were not fulfilled. Moreover, the reform of the prosecution is considered to have been ineffective in practice.⁷⁸⁴

Despite a national anticorruption program and reformation of institutions responsible for the investigation and prosecution of corruption, the government itself acknowledged that abuses of power and bribery were still prevalent. The incidence of corruption and the gravity of cases among public officials were believed to be growing despite very few de facto prosecutions.⁷⁸⁵ In 2004, public opinion was still concerned about widespread corruption among highly ranked public officials. Moreover, despite gradual improvements, reform was considered to have been only half way carried through, with serious shortcomings in politics.⁷⁸⁶ According to TI Corruption Perception Index, many still perceived the newly adopted anticorruption legislation and institutions as "insufficient to dismantle the intricate web of connections between political and

⁷⁸³ Freedom House, *Nations in Transit Report 2004*.

⁷⁸⁴ Freedom House, *Nations in Transit Report 2004*.

⁷⁸⁵ Czech Ministry of Interior, Report on Corruption in the CR and on the Following of the Schedule of the Government's Programme of Fight against Corruption 2001, 5, cited in Open Society Institute, *Monitoring the EU Accession Process*, 139.

⁷⁸⁶ Freedom House, *Nations in Transit Report 2005*.

business elites.”⁷⁸⁷ Hence, to the previous list of foci of corruption, we notice new ones being added such as the banking system and the police, according to a 2001 Czech opinion survey.⁷⁸⁸

Post-accession anti-corruption developments

Transparency International has noted several positive developments in the 2007-2008 period, and namely: the launch of an anticorruption hotline, the “activization” of SAO with the appointment of Frantisek Dohnal, a “strong personality” as the Head of the institution, the carry out of an analysis of corruption risks within government agencies, the amendment of criminal legislation that limits money laundering and allows the seizure of illicit profits from corrupt practices, and the gradual professionalization and computerization of the civil service.⁷⁸⁹ The adoption in 2006 of new conflict-of-interest legislation is probably one of the most important achievements in the early post-accession period. The law does not oblige, however, spouses of public officials covered by the law, as well as judges and state attorneys to submit asset declarations (controversial amendments passed in early 2008).⁷⁹⁰ Along with these developments, TI also highlights its concerns regarding issues such as non-transparent public budgets and ineffectively controlled public tenders, lack of legislation for the protection of whistleblowers and lobbying control, consistent political pressure on public officials, and insufficient investigation and prosecution of high-rank politicians and officials. Furthermore, in the

⁷⁸⁷ Freedom House, *Nations in Transit Report 2005*.

⁷⁸⁸ Centre for Public Opinion Research survey, 2001, cited in Open Society Institute, *Monitoring the EU Accession Process*, 142.

⁷⁸⁹ Transparency International, CPI 2007-2008.

⁷⁹⁰ Freedom House, *Nations in Transit Report 2009*.

National Integrity Study released in December 2011, TI indicates that the state attorney's office, the state administration, and the police remain to be "the weakest pillars in the system" to address corruption. Also, there is a general unwillingness across state institutions to take action against corrupt practices due to "excessive politicization."⁷⁹¹ Moreover, numerous changes in government as well as the lack of guarantees for appointments and dismissals of civil servants lead to amplified fluctuation in the civil service. This phenomenon consequently opens more avenues for corruption.⁷⁹²

During the post-accession period, the Czech governments have adopted numerous ambitious anti-corruption strategies. Most of them, like the 2006-2011 or the 2011-2012 strategies have notoriously failed. That is because governments backtracked on most of the proposed reforms. The creation of a special team of prosecutors that would deal with the most serious cases of corruption, or the amendment of the criminal code that would distinguish lobbying from corruption have not materialized.⁷⁹³ These ambitious failures have worsened the "already alarming intersection" of politics and business in the Czech Republic. This has consequently led to the "gradual 'cartelization' of the political space" in the country.⁷⁹⁴ Moreover, the Information Service has also stated numerous times that "corrupt practices in public procurement were based on informal, clientelistic structures which could undermine the activities of public authorities."⁷⁹⁵

Moreover, the latest 2013 anti-corruption strategy, according to the Commission's 2014 Anti-Corruption Report, "while repeating the majority of measures promised by the

⁷⁹¹ Transparency International, *National Integrity Study 2011*, cited in Freedom House, *Nations in Transit Report 2012*; Freedom House, *Nations in Transit Report 2013*.

⁷⁹² 2013 Report of the Czech Security Information Service; European Commission, *Anti-Corruption Report 2014*, 5.

⁷⁹³ Freedom House, *Nations in Transit Report 2009*.

⁷⁹⁴ Freedom House, *Nations in Transit Report 2010*.

⁷⁹⁵ European Commission, *Anti-Corruption Report 2014*, 7.

previous strategy, covers a wide range of policies but limits itself to listing actions.”⁷⁹⁶

The Nečas Government (2010-2013) was hence ineffectively engaged in delivering palpable results of its officially stated commitments to fight corruption, according to the most recent Freedom House *2015 Nations in Transit* Report. One achievement was the creation of a consultative body, the Government Council for the Fight against Corruption, established in July 2014 to coordinate anti-corruption activities, and led by the Minister for Legislation and Human Rights. At the same time, similar powers were delegated to a deputy prime minister focusing specifically on corruption⁷⁹⁷. This unclear division of tasks led to greater diffusion of responsibility on delivering anti-corruption results.

Moreover, several anti-corruption initiatives had a very limited expected effect. As an example, instead of bringing transparency in the ownership structure of murky economic agents, the law abolishing anonymous shareholding made businesses either move abroad or deposit their shares with lawyers who can refrain from making their client’s identity public⁷⁹⁸. Similar limited results are displayed by the newly adopted civil service legislation.

One important post-accession achievement of this Government in anti-corruption is the amendment of the parliamentary immunity legislation. According to the Czech Constitution, unlimited immunity protected MPs from criminal prosecution for life unless it was waived by the Parliament.⁷⁹⁹ Following the amendment of the Constitution in

⁷⁹⁶ Government Resolution No. 39 of January 16, 2013, http://www.korupce.cz/assets/Strategy-2013-a-2014_FINAL.pdf.

⁷⁹⁷ Freedom House, *Nations in Transit Report 2015*.

⁷⁹⁸ David Ondráčka (Director, Transparency International Czech Republic), 11 November 2014, cited in Freedom House, *Nations in Transit Report 2015*.

⁷⁹⁹ Code of Criminal Procedure of the Czech Republic, Article 11 sub 1(c), cited in European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 3.

2013, immunity protection was reduced to the duration of the term in office⁸⁰⁰. In this regard, criminal investigation can start “even if the parliamentary chamber had not lifted the immunity.”⁸⁰¹ This reform is a significant step forward especially in the context when high-level prosecutions are very rare events in the Czech Republic.

Despite institutional efforts to combat corruption in the implementation of EU funds, such as the Government Strategy for the Fight against Corruption 2013–2014 at the national level, and more specific ministerial and departmental anti-corruption programs, the EC’s anti-corruption report still points at the lack of independence of audit bodies and verification mechanisms as salient weaknesses for the transparency of the use of EU funds.⁸⁰² SAO’s influence in addressing financial irregularities and overspending in state administration diminished significantly in the post-accession period. Its competences are shared with other institutions, and recent legislative attempts at strengthening its powers were largely unsuccessful⁸⁰³. Moreover, it transformed into an agency that politicians consider “incompetent and toothless.”⁸⁰⁴ That is mostly because SAO cannot impose sanctions and its findings are generally ignored.

The Czech Security Information Service in its annual reports regularly highlights the issue of undue influence and conflicts of interest in the sectors of energy, railway infrastructure, forestry and postal services.⁸⁰⁵ In this respect, the Government adopted in 2012, for the first time, an Ethical Code that includes “the obligation to report corruption

⁸⁰⁰ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 3.

⁸⁰¹ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 3.

⁸⁰² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 5.

⁸⁰³ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 2.

⁸⁰⁴ Mentioned repeatedly in Freedom House, *Nations in Transit 2008, 2011, 2012 Reports*.

⁸⁰⁵ Press release, January 2011, http://www.zindex.cz/data/2011-01-25-TZ_projektu_zIndex.doc, cited in European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 7.

to management or to law enforcement bodies.”⁸⁰⁶ The Code, however, does not include any provisions for the protection of whistleblowers. A year later, the Czech government created a working group to consolidate whistleblower protection, but no progress has been so far reported.⁸⁰⁷ Whistleblowing, more generally, represents “a residue from the Communist period” and therefore does not enjoy a lot of support in the Czech society.⁸⁰⁸ Moreover, according to Freedom House, low police credibility represents another reason for the low support for whistleblowing among the Czechs.

Until 2014, there was no legislation regulating lobbying in the Czech Republic. In that way, communication between public officials and lobbyists is not monitored, creating avenues for undue influences and corruption. Moreover, the legislative process is “highly vulnerable to lobbying pressure”, and it “has become more serious over time.”⁸⁰⁹ In this context, after the first read of the proposed legislative act, members of parliament can further submit modifications to the discussed laws. Moreover, “there is no mechanism for filtering such proposals, which are then voted on by the Chamber as a whole during the second reading.”⁸¹⁰

The European Commission has identified in its 2014 anti-corruption report several areas in need of further reform and monitoring: the use of EU funds, public procurement, integrity in public administration, financing of political parties, and prosecution of corruption. These issues are all interlinked, according to the EC:

“The causes of deficiencies in the implementation of EU funds include weaknesses in public administration, in the legislation dealing with conflicts of interest, lack of transparency in the

⁸⁰⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 3.

⁸⁰⁷ Phase 3 Report on Implementing the OECD Anti-Bribery Convention on the Czech Republic. OECD, 46, <http://www.oecd.org/daf/antibribery/CzechRepublicphase3reportEN.pdf>.

⁸⁰⁸ Freedom House, *Nations in Transit Report 2004*.

⁸⁰⁹ Open Society Institute, *Monitoring the EU Accession Process*, 166.

⁸¹⁰ Open Society Institute, *Monitoring the EU Accession Process*, 166.

ownership of participating companies and bypassing of public procurement legislation.”⁸¹¹

Financing of political parties, in this regard, is an area of concern that reemerged in the post-accession period, and breeds more opportunities for corruption. The largest source of political party financing in the Czech Republic is the state. Public subsidies may constitute up to 85 percent of a party’s budget. According to GRECO, the procedures for financing political parties and election campaigns are insufficiently transparent, however.⁸¹² Moreover, there is no effective or independent oversight mechanism as such. The members of parliament themselves, through the Supervisory Committee of the Chamber of Deputies, represent the only external oversight authority on the use of financial resources allotted by the state to political parties.⁸¹³

The existing prosecution mechanisms, according to the OECD Working Group on Bribery, face political pressures that “may indirectly influence investigations and prosecutions.”⁸¹⁴ These undue influences are reflected in the institutional framework of prosecution powers. In this regard, the head of the Supreme Public Prosecutor's Office can be dismissed without providing any reasoning at the proposal of the Minister of Justice.⁸¹⁵

The two regional High Public Prosecutor’s Offices and the Supreme Public Prosecutor’s Office coordinate the supervision of high-level bribery cases. Specialized public prosecutors are handling corruption cases. In October 2012, an agreement to

⁸¹¹ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 5.

⁸¹² GRECO, *Evaluation Report on the Czech Republic*, 2011, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)10_CzechRep_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)10_CzechRep_Two_EN.pdf).

⁸¹³ GRECO, *Evaluation Report on the Czech Republic*, 2011, 11.

⁸¹⁴ [http://www.oecd.org/daf/anti-bribery/CzechRepublic phase3reportEN.pdf](http://www.oecd.org/daf/anti-bribery/CzechRepublic%20phase3reportEN.pdf).

⁸¹⁵ http://www.euro-justice.com/member_states/czech_republic/country_report/1713/; Act on Public Prosecutor’s Office, 283/1993.

restructure public prosecution was reached by the government. It aimed at reducing the number of coordination issues by centralizing the prosecution authority. The number of administrative layers was hence reduced from four to three: district and regional offices, and the Supreme Prosecution Office. It is not clear yet whether this reform will reduce the politicization of prosecution.

The EU Anti-Corruption Report hence recommends the following reforms to be implemented: further reforming the civil service by addressing conflicts of interests, merit-based recruitment, and arbitrary dismissals; including safeguards against political interference; improving transparency and “establishing effective and impartial supervision” of party and electoral campaign funding; and strengthening the independence of prosecutors.⁸¹⁶

In September 2014, after nearly ten years of negotiations and postponing, the Law on Civil Service was finally adopted. This new law aims to make the appointment process much more transparent in the context of numerous political appointments in public administration regularly undertaken by governments⁸¹⁷. Provisions clearly specify the role of civil servants and introduce merit-based competition. Nevertheless, according to anti-corruption NGOs, the new law “does not prevent ministers from replacing high-level officials.”⁸¹⁸ In this sense, the new law does not prevent public administration from continuing political pressure and corruption. Finally, it needs to be acknowledged that the current anti-corruption legal framework is mostly in line with international standards. The Government has ratified the United Nations Convention against Corruption (UNCAC)

⁸¹⁶ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 11.

⁸¹⁷ Freedom House, *Nations in Transit Report 2015*.

⁸¹⁸ David Ondráčka (Director, Transparency International Czech Republic), 11 November 2014, cited in Freedom House, *Nations in Transit Report 2015*.

and the Council of Europe Criminal Law Convention on Corruption.

Corruption level has been constantly on the rise since 2004 in the Czech Republic. A September 2005 domestic public opinion survey showed that the Czechs identified bribing and corruption as having “the greatest influence over politicians' decision making, followed by interest groups and lobbying.”⁸¹⁹ Moreover, as many as 69 percent of Czechs believe that patronage and nepotism are “very serious or quite serious problem” when doing business.⁸²⁰ The areas most affected by corruption, according to Transparency International, are public contracts, conflict of interest, public spending, non-transparency of state administration, and lack of professional investigations.⁸²¹ Furthermore, the state attorney's office, the state administration, and the police remain to be “the weakest pillars in the system” to address corruption.⁸²² Finally, there is a general unwillingness across state institutions to take action against corrupt practices due to “excessive politicization”⁸²³ and vulnerability to political influence⁸²⁴. In this context, prosecution of large-scale corruption remains a very rare occurrence.⁸²⁵ In light of this degrading anti-corruption performance we find evidence that suggests that the foci of corruption have at best not changed. Evidence also suggests that weak internal control mechanisms as well as the lack of law enforcement are to be responsible for this ‘alarming’ situation.

⁸¹⁹ Center for Research of Public Opinion survey cited in Freedom House, *Nations in Transit Report 2006*.

⁸²⁰ European Commission, *2013 Eurobarometer 374* and 397.

⁸²¹ Freedom House, *Nations in Transit Report 2006*.

⁸²² Transparency International, *National Integrity Study 2011*.

⁸²³ Freedom House, *Nations in Transit Report 2013*.

⁸²⁴ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 5.

⁸²⁵ <http://www.transparency.cz/analyza-soudnich-rozhodnuti-vydanych-letech-2010-2012-vecech/>.

To conclude, we find evidence for the Czech case that supports the first hypothesis. As a case backsliding on its anti-corruption performance after accession, it also has a significantly increased number of weaknesses in its institutional design. In light of the evidence discussed above, we notice that the weaknesses in institutional designs closely correspond to the foci of corruption identified by domestic and international actors. In this context, evidence shows that sectors such as public administration, the legislature, and law enforcement that institutionally were marred by institutional ‘loopholes’ also represent the areas most affected by corruption. Despite several attempts at carrying out policy changes, we find very little evidence that suggests effective reform of the weaknesses that were identified as troublesome in the 1990s.

Hence, the Czech Republic’s foci of corruption look very similar before and after accession. Public administration, the legislative process and MPs, the judiciary, and financing of political parties were identified as main foci of corruption before accession. Public procurement was also considered a heavily corrupt sphere. After accession, public administration, the legislative process and financing of political parties remained important sources of political corruption as well as the law enforcement agencies. The public procurement process is still plagued by corrupt practices as well. Moreover, despite a proliferation of institutional actors meant to fight corruption, there are no effective or independent oversight mechanisms until today that would be able to contain corruption in the executive or the legislature. Hence, despite a web of institutions that all follow the most advanced international standards, we do not find evidence of reforms that would effectively address the institutional weaknesses that allow corrupt behavior to

persist. The deficiencies in the institutional design hence mostly explain the worsening anti-corruption performance.

8.2. HUNGARY

Due to their rapid pace and success, the Hungarian socioeconomic transformations in the early 1990s put the bases of the most successful democratic transition in the post-Communist space.⁸²⁶ Free and fair elections, active civil society, independent media, strong Constitution and court system, as well as effective rule of law, all provided the framework for the development of the most consolidated democracy in the CEE region.⁸²⁷ In this context, Hungary performed relatively well in the early years of transition according to international surveys of corruption. In 2001, CPI ranked Hungary 31st out of 91 countries, portraying it as the least corrupt country among the other CEE states included in the survey, with the exception of Estonia.⁸²⁸

Despite having a reputation of one of the least corrupt post-communist countries in the CEE region, aggregate international estimates of control of corruption show that Hungary, in fact, experienced an increase in corruption in the two decades after the fall of communism. This process started in the early 1990s and accelerated immediately after its EU entry. According to the World Bank WGIs, control of corruption was in decline in the 1990s, with slight improvements registered in the EU pre-accession period, and in free fall starting 2004 (see Figure A.1). In 1995, it was registering the best anti-corruption performance score (0.58) only after Slovenia and the Czech Republic. By 2014, it is

⁸²⁶ Open Society Institute, *Monitoring the EU Accession Process*.

⁸²⁷ Freedom House, *Nations in Transit Report 2003*.

⁸²⁸ TI, *Corruption Perception Index 2002*.

placed the lowest in the region (0.13) preceded only by Slovakia (0.12). The evidence drawn from the within-case analysis suggests that the reforms Hungary adopted led to the establishment of an advanced institutional anti-corruption design towards EU accession. Yet it was marred by numerous weaknesses that have mostly been left unaddressed until today. Moreover, under the Orban governments, these started to be particularly exploited. Moreover, these ‘loopholes’ correspond to the foci of corruption in Hungary today, and help explain the general country’s worsening anti-corruption performance.

Early transition period (1990s-2001)

In the early stages of development of the anti-corruption legislation, the Hungarian Criminal Code sanctioned only passive bribery.⁸²⁹ Important changes were adopted throughout the transition years to both meet international standards and to also prevent opportunities for corruption particularly in the civil service. In this context, more severe sanctions were introduced in 1998 for special types of corrupt practices, and are considered to have had positive effects on the lower levels of public administration.⁸³⁰ The reforms envisioned more serious penalties for senior officials, obligation to report corruption at work place, and granting immunity to one party to a bribery act in exchange for reporting. “Trafficking in influence” was also defined as a criminal act in the penal code. In this sense, the anti-corruption legislation has evolved and corresponded to most international standards already by the end of the 1990s.

⁸²⁹ According to the Act no. 4/1978 of the Hungarian Criminal Code: “[C]orrupt practices (accepting bribes) are committed by an official who asks for or accepts advantage or a promise thereof in relation to his or her official activities, or makes an agreement with a person asking or offering such advantage.”

⁸³⁰ Open Society Institute, *Monitoring the EU Accession Process*.

Even up to this day, there is no general overarching law defining conflict of interest or requiring asset declarations from public officials.⁸³¹ Yet there are over thirty specific regulations adopted in the early 1990s and addressing separate categories such as the ministers, civil servants, parliamentarians, judges and prosecutors. By law, MPs and civil servants are required to submit asset and income declarations.

The institutions responsible for state financial control play an important role in controlling corruption. The State Audit Office (SAO) and the Government Control Office (GCO) are two of the most important bodies in this respect. SAO, as the main financial and economic supervisory entity, is subordinated to the Parliament that has authority over its budget, structure, and staffing.⁸³² It enjoys a high degree of independence: its President is elected for a twelve-year term with the vote of two-thirds of the MPs, and auditors have almost double the salary of other public servants.⁸³³ The Office audits the annual state budget, the pension fund, the healthcare fund, numerous local government branches, political parties' accounts, election campaign spending, the Privatization Agency, and the Hungarian National Bank among other units. In this sense, SAO has extensive investigative powers but at the same time, it has no authority to impose corrective measures. Moreover, its recommendations are oftentimes ignored. The European Commission has suggested the need for the Hungarian Parliament to follow up on these recommendations.⁸³⁴

⁸³¹ http://www.bezkorupce.cz/wp-content/uploads/2014/08/oziveni_comparative_analysis_coi_01-1.pdf

⁸³² Act no. 38/1989 on the State Audit Office.

⁸³³ Open Society Institute, *Monitoring the EU Accession Process*.

⁸³⁴ European Commission, *2001 Regular Report*, 93.

The GCO is another agency for internal financial control and is directly subordinated to the Government.⁸³⁵ Considering that about one-third of the carried out audits are special requests of the Prime Minister, the agency is considered vulnerable to political influences. In this respect, the Commission has noted in the 2001 Regular Report the important achievements in setting up the necessary institutional framework on internal financial control and audit. At the same time, it has highlighted the lack of resources and poor professional preparedness of these audit units that affect their functional independence, and therefore the need for their further consolidation.⁸³⁶

It is important to highlight that there are no specialized anti-corruption agencies in Hungary. In this context, the police and the Prosecutor's Office are the main institutions investigating corruption. There is, however, a Coordination Center against Organized Crime, that is responsible to the Government and whose main goal is to coordinate the existing investigatory agencies dealing with cases of bribery and money laundering.⁸³⁷

There were no significant institutional reforms of the public administration in the early transition years to make it less vulnerable to corrupt practices. The 1992 Act on the Legal Status of Public Servants defines the role of the civil service.⁸³⁸ According to the Act, civil servants cannot hold additional executive positions, but are allowed to have an external job. A controversial provision states that civil servants cannot hold office in a political party, cannot take a public political stance, but they are allowed to stand for election. This provision seems to affect the younger civil servants interested to pursue a political career. There are no activity restrictions after finishing a civil service career.

⁸³⁵ Government Decree no. 61/1999 (IV.21) on The Supervision, Tasks and Jurisdiction of the Government Control Office, as cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁸³⁶ European Commission, *2001 Regular Report*, 93.

⁸³⁷ Act no. 126/2000 cited in Open Society Institute, *Monitoring the EU Accession Process*.

⁸³⁸ Act no. 23/1992.

Political appointments were and continue to be usual matter in the Hungarian civil service. Moreover, investigations of corruption in the civil service could be initiated only by filing a complaint. These could be submitted only in regards to staff junior to the one submitting the complaint. There are no penalties for civil servants submitting false information on the declaration of assets. These are all serious ‘loopholes’ in a seemingly advanced institutional framework.

One salient issue oftentimes vulnerable to corruption is the off-budget public procurement. The government through state-controlled agencies, such as the Hungarian Development Bank (HDB), administers some areas of public expenditure, in this context. Motorway construction and other public works for instance are excluded from the budget, and administered by the HDB. Supervisory board members, as well as all executives, are named by the Prime Minister and the Finance Minister.⁸³⁹ Moreover, HDB activities are considered bank secrets. Also, the Bank does not need legislative approval for its expenditures, and it is not required to use public tender procedures. These expenditures could not be monitored by the Parliament or by any other control mechanisms until 2002 when the Bank became legally obliged to quarterly report on its activity. Yet, the introduction of a two-year state budget in 2000 meant overall less scrutiny for the government’s expenditures and revenues.⁸⁴⁰

According to the 1996 Law on Conflict of Interest, MPs have to conform to conflict of interest provisions, and must declare their business interests, income as well as properties to the Speaker of Parliament, together with their spouses and children.⁸⁴¹ Monitoring mechanisms are very weak, however, and there is no sanctioning for

⁸³⁹ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁴⁰ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁴¹ Act no. 55/1990 on the Legal Status of Members of Parliament.

providing false or incomplete information.⁸⁴² Many disregard these requirements altogether. Also, there are many limitations to adjacent activities of MPs. For instance, they cannot simultaneously serve on the board of state-owned companies but it is allowed to activate in the private sector as long as it is stated in the asset declaration,⁸⁴³ another significant ‘loophole’ in the legislation considering the local context.

According to the Hungarian Constitution, MPs enjoy immunity.⁸⁴⁴ Criminal or misdemeanor proceedings can be however initiated against them at the exclusive request of the Prosecutor-General, and only with the prior approval of the Parliament. According to the OSI assessment report, “Immunity provisions for MPs have been increasingly undermined in a way that threatens parliamentary debate, through increased defamation and civil law suits against MPs.”⁸⁴⁵

The legal framework guiding political party financing is considered to be inadequate for a rigorous control of corruption. Direct state subsidies in this context represent the main source of party funding in Hungary.⁸⁴⁶ This support is considered however largely insufficient and inadequate, and therefore is argued to be encouraging clientelism.⁸⁴⁷ Moreover, according to the legislation, a party is not allowed to accept funds from foreign or anonymous donors. These provisions encourage parties to use associated foundations to redirect funds from anonymous donors, and to avoid reporting spending.⁸⁴⁸ The law also defines the threshold for campaign spending per candidate, which again, is largely insufficient.

⁸⁴² Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁴³ Act no. 55/1990 on the Legal Status of Members of Parliament.

⁸⁴⁴ Act no. 55/1990 on the Legal Status of Members of Parliament.

⁸⁴⁵ Open Society Institute, *Monitoring the EU Accession Process*, 237.

⁸⁴⁶ [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)8_Hungary_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)8_Hungary_Two_EN.pdf).

⁸⁴⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁴⁸ Open Society Institute, *Monitoring the EU Accession Process*.

Moreover, party accounts and donations exceeding a certain amount have to be published.⁸⁴⁹ SAO is responsible for auditing party financing and campaign spending, but claims it cannot do so effectively due to legal ambiguities. Moreover, it cannot apply sanctions and has no capacity to verify whether campaign-spending declarations provide truthful information. Its recommendations to modify the law were largely ignored by the Parliament despite being debated across various governments.⁸⁵⁰

The highlighted weaknesses led to a list of recommendations⁸⁵¹ for governments to address in the 2000s, and namely: (a) more thorough scrutiny over public expenditures, including off-budget; (b) more state funding for political parties; (c) uphold the freedom of the media to balance broadcasting time for the Government and the opposition.⁸⁵²

To conclude on the early transition years, Hungary set up from the outset what on the surface appeared to be a strong anti-corruption legal framework that competed with most international standards at the time. That explains its high anti-corruption rankings it received in the early 1990s. Yet, as shown above, these institutions in fact suffered from numerous legal loopholes that could be easily exploited by interested parties. Most relate to the capacity to monitor and supervise public actions and behavior, as well as enforce sanctions. Most of the reviewed control mechanisms, in this regard, suffer from excessive politicization.

Evidence portraying undue influence on behalf of the executive was not a scarce commodity. For instance, prosecution was considered to have become progressively

⁸⁴⁹ Act no. 33/1989 on the Operation and Financial Management of Political Parties.

⁸⁵⁰ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵² Open Society Institute, *Monitoring the EU Accession Process*, 287.

vulnerable to the executive. One example is the appointment of Peter Polt in 2000, as Prosecutor General. He was a former FIDESZ-MPP candidate in the 1994 general elections. After his appointment, the Prosecutor's Office has issued some controversial decisions on cases of corruption that involved several government members.⁸⁵³ Another example is the fuzzy boundaries between the executive and party campaigning. In 1999 the Government established and funded a Country Image Center responsible for promoting a positive image of Hungary among its citizens. Instead, it was found to be intensively praising government activities up to the 2002 general elections.⁸⁵⁴

Furthermore, a 1999-2000 Gallup poll identified the following main sources of high-level corruption in Hungary: seriously entangled business and political elite interests, weak institutions and therefore weak law enforcement, an over-bureaucratized legal system and public administration, and the privatization process. Closer to the EU pre-accession period, public procurement and civil service recruitment were becoming the new loci of corruption.⁸⁵⁵ We may conclude hence that the advanced score that Hungary received for its anti-corruption achievements in the 1990s do not take into account the numerous loopholes that were discussed above. Its institutions, in fact, were much weaker in their ability to contain corrupt practices than previously thought.

Pre-accession period – the Hungarian anti-corruption agenda (1998-2004)

⁸⁵³ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵⁴ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵⁵ <http://www.gallup.hu/Gallup/monitor/en/gsurveys/010120_focus.html>, (last accessed 15 August 2002), cited in Open Society Institute, *Monitoring the EU Accession Process*, 240-241.

The pre-accession period has registered both positive and negative developments in anti-corruption performance. As in the case of other candidate countries, the EU had a major impact on the anti-corruption changes adopted in Hungary.⁸⁵⁶ Yet, the Commission did not provide financial support for anti-corruption reforms in particular. In this sense, one of the largest programs supported by the EU in the pre-accession period was a multi-country anti-fraud program that looked to develop and consolidate the administrative capacity of the state to detect and prevent fraud, boost cooperation and coordination, as well as expand the exchange of information about frauds affecting the EU as a whole.⁸⁵⁷

In the 1998-2002 period, the Orbán government introduced several important legislative changes to better prevent and control corruption. A salient anti-corruption development was the adoption of the governmental Comprehensive Strategy Against Corruption in 2001. The changes included amendments to the Law on Public Procurement, more punitive measures for bribery in the penal code, mandatory instruments preventing conflicts of interest, and measures against money laundering. Yet, the strategy was criticized for focusing on corruption in the private sector rather than on cases of high-level political corruption.⁸⁵⁸ This is important since corruption seems to be mostly prevalent among political parties and policy-makers.⁸⁵⁹

Starting 2001, public servants and their families have joined the group of representatives who are required to submit property declarations to the Control Office of the Public Service (COPS) set up in 2001. MPs, following a corruption scandal, were also required to disclose their assets annually rather than at the beginning and end of their

⁸⁵⁶ Freedom House, *Nations in Transit Report 2007*.

⁸⁵⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵⁸ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁵⁹ Freedom House, *Nations in Transit Report 2004*.

mandates as it was the case until then.⁸⁶⁰ No penalty mechanisms for submitting incomplete or false declarations were put in place, however. Also, investigations can be initiated only on the basis of a complaint received by COPS.

The EU pre-accession period witnessed the promotion of a new elite of high-ranking public servants who enjoyed a substantial salary increase (although still low in comparison to the private sector) and better training opportunities.⁸⁶¹ This was done to guarantee the independence of public servants and make civil service a more appealing career option. Beyond higher salaries, this elite also benefited from a five-year mandate that could not be terminated prematurely. The Prime Minister however decided independently who the recipients of this status would be hence overshadowing a *prima facie* positive development for the civil service. Moreover, there was no legal possibility to appeal these political appointments. The opposition challenged the stated goal of these reforms, claiming that it was conducted to “install politically loyal civil servants.”⁸⁶²

The 2002 newly invested Socialist government that came to power on an anti-corruption platform started its mandate by removing large numbers of top servants at various ministries, governmental agencies, independent bodies, and state-owned companies. Together with cases of high-level political appointments, the process instilled serious doubts about the commitment of the new government to seriously handle political corruption. One of its most important reforms in the pre-accession period was the adoption of the “glass pocket” law in April 2003. The law was meant to increase transparency in public spending by providing additional mandatory disclosure

⁸⁶⁰ Act no. 103/2001, effective December 2001.

⁸⁶¹ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁶² See report of opposition question to Prime Minister’s Office given in “Government installs own top civil servants before election – Liberals,” Hungarian TV2 satellite service, 27 November 2001, as reported by BBC Monitoring, cited in Open Society Institute, *Monitoring the EU Accession Process*, 253.

mechanisms, and to fight corruption via economic regulations.⁸⁶³ The law “introduced the concept of public interest data and redefined the boundaries of business secrets.”⁸⁶⁴ It also expanded the competences of SAO in investigating the use of public funds.

Yet, many of the governmentally proposed anti-corruption policies were halted in 2004. The Ethic Council of the Republic, an anti-corruption board set up the year before to recommend new anticorruption legislation and develop a code of ethics for civil servants was dismissed in 2004. Also, the State Secretariat of Public Finance, set up in 2002 to oversee public procurement and ensure transparent handling of public funds, was also disbanded in 2004.⁸⁶⁵ In this context, there have been minor changes in the institutions dealing with corruption investigations. High-level corruption and organized crime cases fall under the jurisdiction of the Central Investigation Department of the Office of the Prosecutor. Even though there are separate units dealing with corruption within particular agencies, there is still no independent body dealing solely with corruption and that creates cooperation problems among the existing institutions.⁸⁶⁶ Moreover, a much-awaited law on lobbying was not adopted despite an acknowledged high risk of corruption in party financing.⁸⁶⁷ Moreover, since 2003 political parties have been given green light to set up foundations for supporting their social activities. They are entitled to accept donations, and to receive state funding.⁸⁶⁸

⁸⁶³ Freedom House, *Nations in Transit Report 2004*.

⁸⁶⁴ Freedom House, *Nations in Transit Report 2005*.

⁸⁶⁵ Freedom House, *Nations in Transit Report 2005*.

⁸⁶⁶ Open Society Institute, *Monitoring the EU Accession Process*.

⁸⁶⁷ Freedom House, *Nations in Transit Report 2004*.

⁸⁶⁸ European Commission, *Anti-Corruption Report 2014*.

To conclude, Hungary registered ups and downs in the development of its anti-corruption framework during the EU pre-accession period. Progress was achieved primarily by improving domestic regulations but also adhering to new international standards. The enforcement of these regulations however significantly lagged behind. No changes were made to monitoring and control mechanisms to empower their capacity to investigate and sanction corrupt exchanges. Moreover, the foci of corruption stayed the same. Also, on the eve of EU accession, international observers reiterated the need to address corruption. In 2003, the EU was especially concerned about ineffective internal financial control systems in public administration as well as the lack of independence of state institutions.⁸⁶⁹ Freedom House in this context highlighted “attempts by the executive branch of Government to limit control over its activities” and, as a consequence, “the increasing irrelevance of formal democratic institutions.”⁸⁷⁰ Finally, with the institutional weaknesses that have been enumerated above, it is difficult to qualify its overall anti-corruption design a strong one despite the higher rankings it was granted by international assessors on the eve of EU accession.

Post-accession anti-corruption developments

As a result of closer ties between business and politics, and weak oversight and sanctioning regulations regarding public procurement, the first years immediately after accession were plagued by numerous cases of cartel activity in public procurement. Investigations were frequently conveyed by the media, which led to heightened societal

⁸⁶⁹ Freedom House, *Nations in Transit Report 2004*.

⁸⁷⁰ Freedom House, *Nations in Transit Report 2001*.

attention. In September 2005, changes were introduced to the penal code to appease public attention that criminalized cartel activity through the prosecution and sanctioning of executives when these set up cartels.⁸⁷¹ In this sense, Hungary passed numerous anti-corruption provisions in its legislation. Yet the implementation of these laws again lacked enforcement.⁸⁷² The OECD recommended strengthening control and enforcement mechanisms, and namely: to allocate necessary resources for a more effective functioning of the Central Investigation Department of the National Office of the Prosecutor, increase the transparency of prosecution, and enable auditors to report cases of corruption to the appropriate law enforcement authorities.⁸⁷³

In 2006, the long-awaited Law on Lobbying was finally adopted. It targeted more transparency to legislative decisions and more regulation of the lobbying process by registering and monitoring lobbyists' activities. NGOs and trade unions were not included in the authorized lobby groups. Moreover, a register of exchanges between state officials and lobbyists had to be made available online. Yet, the law had very little impact in practice.⁸⁷⁴ It did not envision sanctions, and did not define the length of the mandatory waiting period before former state officials can lobby themselves once their mandate is over.⁸⁷⁵ The law was therefore repealed in 2010.⁸⁷⁶ Several more attempts were made to enhance transparency in the use of public funds. Laws on freedom of electronic information were adopted (2003, 2005, 2012) with somewhat similar main features that required all public institutions to publish online information of public

⁸⁷¹ Freedom House, *Nations in Transit Report 2006*.

⁸⁷² Freedom House, *Nations in Transit Report 2007*.

⁸⁷³ Freedom House, *Nations in Transit Report 2007*.

⁸⁷⁴ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Hungary*.

⁸⁷⁵ Freedom House, *Nations in Transit 2007-2009 Reports*.

⁸⁷⁶ Act repealed by act No. CXXXI of 2010.

interest.⁸⁷⁷ More recent amendments in 2013, however, allow public institutions to limit access to information on grounds of business confidentiality or abusive requests for information.⁸⁷⁸

In 2007, the government initiated a comprehensive anti-corruption agenda to be directed by the minister of justice and law enforcement agencies. A long-term national strategy and a short-term program of action were among the main planned outputs.⁸⁷⁹ In this context, an Anticorruption Coordination Body (AKT) was established the same year, that was also composed of civil society representatives. In short time, a National Strategy and Action Plan to combat corruption were developed.⁸⁸⁰ The government however was not keen on adopting the recommendations elaborated by AKT. By the end of 2008, there was no progress on the National Strategy.⁸⁸¹ In 2009, another strongly criticized anti-corruption bill was passed but its prospects were doomed ahead of the 2010 general elections.⁸⁸²

Many assessment reports elaborated during the post-accession period state that political parties and party financing stay at the heart of political corruption in Hungary. The legislation on political parties, in this regard, was severely criticized over the years. Conflicting provisions creating legal loopholes and inadequacy in the regulation of campaign finances, no effective penalization and enforcement mechanisms addressing illegal party financing, very limited spending per election candidate, lack of guidelines for campaigning periods and admissible expenses, ambiguous and uncontrolled

⁸⁷⁷ Freedom House, *Nations in Transit Report 2007*; European Commission, *Anti-Corruption Report 2014*.

⁸⁷⁸ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Hungary*.

⁸⁷⁹ Freedom House, *Nations in Transit Report 2008*.

⁸⁸⁰ Freedom House, *Nations in Transit Report 2008*.

⁸⁸¹ Freedom House, *Nations in Transit Report 2009*.

⁸⁸² Freedom House, *Nations in Transit Report 2010*.

fundraising and spending through party foundations and party-founded enterprises, short reporting period after elections, all leading to numerous high-ranking corruption scandals that revealed the complex corruption networks within and across political parties, as well as the entangled economic and political interest networks.⁸⁸³ In many cases, “some of the misspent state funds were channeled back to political parties, highlighting the direct link between corrupt practices in the business and political spheres.”⁸⁸⁴

Moreover, according to domestic experts, 9 out of 10 forints are redirected towards party campaigns through potentially unlawful mechanisms and from potentially illicit sources.⁸⁸⁵ While almost every government promises in electoral campaigns to fundamentally address party financing, none has carried out any salient reforms on the matter.⁸⁸⁶ No changes were made until 2013 when a new law was finally passed. According to TI, the new legislation in fact increases the risk of corruption rather than diminishes it.⁸⁸⁷

The 2008-2014 period was characterized by controversial reforms undertaken by the Fidesz government. The new government that took office in May 2010 appointed a special commissioner for accountability and anticorruption with the sole purpose of revealing illegalities committed by the previous MSZP government. In this context, numerous corruption scandals erupted in 2010 that involved and incriminated high-ranking executives and politicians from the previous administration.⁸⁸⁸ As a result of his

⁸⁸³ Freedom House, *Nations in Transit 2006-2014 Reports*.

⁸⁸⁴ Freedom House, *Nations in Transit Report 2010*.

⁸⁸⁵ Freedom House, *Nations in Transit Report 2012*.

⁸⁸⁶ Freedom House, *Nations in Transit Report 2014*.

⁸⁸⁷ Transparency International Hungary, “Fake parties may steal billions of public funds,” 29 October 2013, cited in Freedom House, *Nations in Transit Report 2014*.

⁸⁸⁸ Freedom House, *Nations in Transit Report 2011*.

scrupulous pursuit of corruption evidence, the commissioner was later accused of threatening and giving political instructions to the judiciary.⁸⁸⁹

A two-thirds majority in the National Assembly boosted Fidesz's prospects to put political pressure over independent state institutions. The parliamentary supermajority allows it to nominate the leadership of main bodies without any consent of the opposition. According to Freedom House,

“In practice, the ruling coalition has not shown self-control in any of these nominations since 2010. Consequently, even where legislation would provide an adequate framework for institutions to exercise independent auditing or control, in reality their political autonomy is questionable.”⁸⁹⁰

In this context, some of the anti-corruption agencies and their independence were put under serious threat through the appointment of allies loyal to the government, for typically a nine years term. For instance, from a highly respected institution with a high level of independence (despite its non-binding recommendations and therefore often ignored by lawmakers and law enforcement authorities) SAO was transformed into a political tool of the Fidesz-KDNP coalition. With the appointment of Domokos, a Fidesz member of parliament at the time of his nomination, as the Head of SAO for an irrevocable term of 12 years, the role of SAO as an independent auditing and control institution was compromised.⁸⁹¹

Moreover, despite having the legislative framework in place, the independence of the judiciary and of control institutions was undermined by alleged political ties of top-rank officials within control institutions.⁸⁹² During 2011-2013, the European Commission drew attention in this regard over certain legal measures adopted by the Fidesz

⁸⁸⁹ Freedom House, *Nations in Transit Report 2011*.

⁸⁹⁰ Freedom House, *Nations in Transit Report 2013*.

⁸⁹¹ Freedom House, *Nations in Transit Report 2013*.

⁸⁹² European Commission, *Anti-Corruption Report 2014*.

government. Among the most prominent ones were the decisions to terminate the mandate of the former president of the Supreme Court,⁸⁹³ and to grant extensive powers to the President of the National Judicial Office.⁸⁹⁴ As a result of an ECJ ruling and concerns raised by the Council of Europe Venice Commission, the government later in 2013 addressed these issues by voting a fifth amendment to the Constitution, including the premature retirement of judges and prosecutors.⁸⁹⁵

The public procurement process became even more affected by corruption scandals under the Fidesz government. Public funds were disproportionately redirected towards private clients friendly to Fidesz and Victor Orban, in particular. The lack of an adequate database in this respect hampers the transparency of public spending.⁸⁹⁶ Moreover, the amendment of the freedom of information law reduces even more from the transparency and accountability of the policy-making process.⁸⁹⁷

In the period 2012-2013, the government has adopted important legislation addressing control of corruption. In early 2012, the Fidesz government adopted a two-year anticorruption program that included a wide variety of integrity-related legislation for the civil service, but leaves out the Parliament and the local public administration.⁸⁹⁸ In this context, an integrity management system was set up in 2013 that includes the appointment of integrity officers, anti-corruption training for public servants, adoption of codes of ethics for public administration representatives, and the protection of

⁸⁹³ http://europa.eu/rapid/press-release_IP-12-24_en.htm.

⁸⁹⁴ Especially in relation to the competency to designate a court in a given case and to transfer judges without consent. http://europa.eu/rapid/press-release_MEMO-12-165_en.htm.

⁸⁹⁵ European Commission, *Anti-Corruption Report 2014*.

⁸⁹⁶ Freedom House, *Nations in Transit Report 2014*.

⁸⁹⁷ Freedom House, *Nations in Transit Report 2014*.

⁸⁹⁸ Governmental decree of 1104/2012. (IV. 6.) The corruption prevention program of the public administration, 2012-2014. www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/parlamenti-allamtitkarsag/hirek/atfogo-korrupcioellenes-program-indul.

whistleblowers amongst other measures. In this regard, the Commission's assessment of the anti-corruption program claims that the main foci of corruption are not addressed by the initiative. Neither the issue of insufficient law enforcement efforts nor stricter checks on party financing are tackled. Moreover, the program hardly targets the risks associated with clientelism, favoritism, and nepotism in higher ranks of public administration, or those stemming from the interactions between economic and political actors.⁸⁹⁹

In 2013, the government has adopted a new Criminal Code that criminalizes budget fraud and provides tougher sanctions for certain corruption-related infringements.⁹⁰⁰ The regulations on property declarations for top-rank officials were further standardized to regulate conflicts of interest. Yet, there are no independent institutions to verify asset declarations or conflicts of interest concerning top-rank elected and appointed officials.⁹⁰¹ Also, a new law on whistleblowing was adopted the same year that aims to ensure safeguards of confidentiality of reporting and protecting whistleblowers from any negative consequences of their action. The law does have several shortcomings such as the fact that whistleblowers are not protected from procedures against them in case they reveal professional or commercial secrets.⁹⁰²

In sum, Hungary's institutional and legislative anticorruption framework is amongst the most advanced ones in the CEE region, at least on paper. That is mostly due to the legislative reforms undertaken in the early 1990s and before accession. While

⁸⁹⁹ Assessment of the 2013 national reform program and convergence program for Hungary, Accompanying the document Recommendation for a Council Recommendation on Hungary's 2013 national reform program of 29 May 2013, http://ec.europa.eu/europe2020/pdf/nd/swd2013_hungary_en.pdf.

⁹⁰⁰ Criminal Code of 2012, http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV.

⁹⁰¹ European Commission, *Anti-Corruption Report 2014*.

⁹⁰² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Hungary*.

corresponding to international standards, the institutional design had numerous loopholes that made it unfit for the issues Hungary was confronted with during its democratic transition. The weaknesses discussed above were mostly left unaddressed throughout years.

Evidence shows that internal control and auditing institutions have no capacity to impose sanctions, and their findings are not followed through by the relevant law enforcement authorities. Especially under the Orban government, important institutional checks were disassembled. The lack of internal checks on the executive has left the anti-corruption institutions ‘toothless.’ Moreover, there is a severe politicization of law enforcement institutions. The judiciary and the prosecution are handicapped in terms of exercising their constitutional tasks. This lack of oversight and monitoring over policy-makers and bureaucrats has led to numerous instances of abuse of power. In this regard, the foci of corruption after accession have only increased in intensity and quantity. The Hungarian case, in this regard, supports the first hypothesis.

8.3. *SLOVAKIA*

Starting with the early years of democratic transition, Slovakia registered an overall decline in its anti-corruption performance according to the World Governance Indicators. A closer look though shows significant within-case variation. From 1996 to its first year of EU membership there is salient fluctuation with a general upward trend. Starting with 2005 however, its performance is in constant decline reaching one of the lowest levels in 2013 (see Figure A.1). The evidence drawn from the following within-

case analysis suggests that the reforms that the Slovaks adopted, particularly as part of its EU accession process, did not result in the strengthening of the country's overall institutional anti-corruption framework. Reforms were targeting to meet international standards but were not contextualized to the problems of transition the country faced. The deficient conflict of interest legislation, party financing regulations, and public procurement amongst others were only addressed before EU accession. Corruption, despite an increase in the number of petty corruption investigations, was on the rise. The 'loopholes' that allowed corrupt practices to flourish in the 1990s, in this regard, were mostly left unaddressed and carried through to after accession, fact that explains the country's worsening anti-corruption performance.

Early transition period (1990s-2001)

Slovakia started its independent democratization path emerging out of the former Czechoslovak Federation in 1993. That is the period when it started designing its own state institutions. The potential progress of the next five years was however set back by the government coalition led by the autocratic Prime Minister Meciar who was fighting the opposition parties over the very fundamental rules of the political setup. The junction in this difficult start played the 1998 parliamentary elections that brought to power a reformist coalition led by PM Dzurinda who was later re-elected in 2002 for a second term. This period was marked by several important democratic reforms that set the path for an official invitation for the country to join the EU. In terms of anti-corruption performance, reforms started being felt only in 2002.

Anti-corruption becomes one of the highest priorities only with the 1998 Government in power. The cabinet manages to approve a National Program for the Fight Against Corruption in 2000. That is also when the democratic consolidation phase begins for Slovakia. Major reforms are being adopted. It is without doubt however that the European Commission has significantly impacted most of the anti-corruption policies passed in Slovakia in the pre-accession period. After acknowledging in 1998 that the country fulfilled the Copenhagen criteria, the Commission constantly pressed the Government to more effectively fight corruption, mainly by providing assistance for improving law enforcement.

Conflict of interest, according to the EUMAP Report, in the 1990s and early 2000s represented a widespread problem while procedures necessary to remedy the decisions taken by public officials continued to be inadequate. Legislation aimed at fighting corruption, including bribery, was mostly limited to a 1995 Law aimed at regulating conflict of interest among high-ranked officials and senior state functionaries. The law prohibited “the president, members of Parliament, members of the cabinet, justices of the Constitutional Court, and other supreme state officials” to engage in any type of “business activities, mediate for remuneration business relations between private entities and the government or state-owned companies, and receiving income generated by either a side job or a contractual business relation that exceeds the minimum wage.”⁹⁰³ In this context, highly ranked officials and senior civil servants had to declare their assets and annual income and refrain from salient economic activity.

The declarations, however, are filed exclusively to a parliamentary Committee for the Prevention of Conflicts of Interest. These declarations are not available to the public.

⁹⁰³ Freedom House, *Nations in Transit Report 2003*.

Moreover, in 2002 a bill that would have considerably boosted the number of officials subject to the conflict of interest regulations was rejected in Parliament. The Act in this sense “fails to create effective obstacles to official malpractice”: it refers to a very narrow category of public officials, does not allow publication of declarations, and imposes almost no sanctions on the perpetrators.⁹⁰⁴ Moreover, immunity provisions are oftentimes excessive. Attempts to address and reform these areas by including them in the anti-corruption strategy of the Government have largely failed. In this context, despite limited hard data of corrupt behavior among MPs, there is considerable evidence of “undesirably close ties” between highly-ranked public officials and business interests.

In 2001 Slovakia passes legislation to create a coordinated system of state financial control. The law on budgetary rules is amended in this context. It improves the quality of administration and supervision of budgetary funds as well as funds provided by various international organizations.⁹⁰⁵ Moreover, previous off-budget funds are included in the budget, a grey zone for several other states in the region as well. In addition, the powers of the Supreme Audit Office are reduced due to a number of motives such as political meddling, limits in its auditing competences, lack of a mechanism for enforcing its findings, and unpublished reports.⁹⁰⁶ Furthermore, in the early 2000s there was no special anti-corruption agency. It was only the police and General Prosecutor’s Office that contained special anti-corruption departments. Although the police department initiated high-level corruption investigations, none of them had resulted in court proceedings followed by convictions.

⁹⁰⁴ Freedom House, *Nations in Transit Report 2003*.

⁹⁰⁵ Freedom House, *Nations in Transit Report 2003*.

⁹⁰⁶ Open Society Institute, *Monitoring the EU Accession Process*.

The most important measures taken to combat corruption included the Freedom of Information Act (2001), amendments to the Public Procurement Act and legislation on party financing, a new Judicial Code (2002) and the creation of the Ombudsman (2002). Regulations on party financing, in this context, remain very weak until the early 2000s: “unlimited private donations are permitted, supervision of party funding remains ineffective and party financial reports are not public.”⁹⁰⁷ The Law on Political Parties is passed in October 2000 to ban anonymous contributions to political parties and demand transparency in annual financial reports. In April 2001, mandatory audits on behalf of the Slovak Chamber of Auditors of parties' annual budgets are also introduced. Moreover, the Supreme Bureau of Supervision (NKU) is granted powers to audit all public institutions. Although the leadership of the NKU is nominated by the Parliament, this institution is fully independent.⁹⁰⁸ All audit results are available to the general public.

Up until the beginning of the pre-accession period corruption represented a serious problem in Slovakia for most state institutions. Healthcare, education, judiciary, police, and customs administration were among the most corrupt sectors in the 1990s. Indicators measuring Slovakia's anti-corruption performance in the 1990s up until 2002 indicate a general worsening trend in this regard. The lack of anti-corruption institutions and reforms in this direction correspond to this downward trend. Some measures to increase transparency were adopted as evidence shows but no fundamental reforms were pushed through to help contain corrupt practices. Political party funding was also a key area marred by corruption. Despite some convictions for corruption-related offences, the

⁹⁰⁷ Open Society Institute, *Monitoring the EU Accession Process*.

⁹⁰⁸ Freedom House, *Nations in Transit Report 2003*.

general public perception showed stagnant or worsening levels of corruption. Slovakia started creating its anti-corruption framework only in 2002, which is also the year that marks the beginning of a steep recovery in its anti-corruption performance.

Accession period – the Slovak anti-corruption agenda (2002-2004)

The first steps in combating corruption started in 2000 when the cabinet adopted its own complex anticorruption agenda, the National Fight Against Corruption program. Together with various governmental agencies, the cabinet worked on administrative and legislative measures to help contain corrupt practices. Yet no significant improvements could be noticed. A key problem with the implementation of the Program was the vague description of responsibilities to be undertaken by each of the agencies involved in the process. Other considerations that impeded the successful implementation of the Program were the lack of skills and capacities at fighting corruption as well as the slow implementation of reforms in public administration.⁹⁰⁹ In this regard, one factor that impedes anticorruption efforts during this time is the high centralization of public administration. The executive branch wields excessive influence, and only limited powers are delegated to local administration authorities. Concentration of power in the executive branch hence is associated with ineffective anticorruption efforts particularly at local level.⁹¹⁰

Actual efforts in anticorruption started to be more palpable in 2002-2003. In 2001 a new Civil Service Act is drafted in this context that includes new rules on selecting,

⁹⁰⁹ Freedom House, *Nations in Transit Report 2003*.

⁹¹⁰ Freedom House, *Nations in Transit Report 2003*.

appointing, supervising, and remunerating civil servants. An ethical code for civil servants is also developed, and a new Bureau for Civil Service is established. Moreover, a new class of civil servants with special financial and executive powers is created to whom stricter anticorruption rules apply. The laws entered into force in April 2002.

In 2002, Slovakia's criminal legislation undergoes important changes in regards to corruption. The Parliament amends the Criminal Statute to add several new criminal offenses, including tougher punishments meant to contain corrupt practices. Anticorruption mechanisms were developed also in the judiciary. The authority to strengthen the judiciary is delegated to the Justice Minister, Daniel Lipsic. In this context, the Law on Courts of Law and Judges was adopted and entered into force in 2002. Amongst the anti-corruption mechanisms inbuilt into the law, a key one stipulates that, “cases in all courts in Slovakia must be assigned to individual judges by random computer selection in order to minimize the possibility of influencing the assignment of cases.”⁹¹¹ The Criminal Statute also includes a new clause, the offense of interfering with the independence of a court.

In 2003, the cabinet approves the Report on Concrete Measures to Fulfill the Program Manifesto of the Slovak Government in the Field of Combating Corruption.⁹¹² By addressing some of the weaknesses of the previous program, the document becomes the government's official new anticorruption program. In this regard, a specialized Anticorruption Department at the Government Office with respectable leadership is established, and specific legislation designed to fight corruption is adopted. In this context, Jan Hrubala, a former judge and respected civic activist becomes the head of the

⁹¹¹ Freedom House, *Nations in Transit Report 2003*.

⁹¹² Freedom House, *Nations in Transit Report 2003*.

specialized Department of Combating Corruption. Also in 2003, the Government establishes the Special Court of Justice and Special Prosecutor's Department to fight corruption and organized crime. Both institutions address containment of corrupt practices.⁹¹³ Slovakia's penal code is further amended and hence penalizes both active and passive forms of bribery.⁹¹⁴

In 2004 the Parliament and the cabinet agrees on various legislative and executive measures expected to diminish opportunities for corruption. A new Law on Conflicts of Interests is hence passed, which introduces stricter performance criteria for a large group of public officials. The Parliament introduces also amendments to the Labor Code, aimed at protecting whistleblowers, the persons who report on corrupt or unethical practices in the workplace⁹¹⁵. The legislation however entered into force only in 2015.⁹¹⁶

During Slovakia's short EU pre-accession period, the government rapidly adopts a set of reforms that shape one of the best anti-corruption institutional designs in the region. This rapid pace of reforms is reflected by the highly improved anti-corruption ranking Slovakia receives on the eve of EU accession. Drawing on the experience of western democracies and existing international standards, adopted institutions did not consider the local context and embedded important 'loopholes' in the process whose effects became visible after accession.⁹¹⁷ Nevertheless, this push for intensive reform adoption came from the strong aspirations of the country to become a EU member in

⁹¹³ Freedom House, *Nations in Transit Report 2006*.

⁹¹⁴ Freedom House, *Nations in Transit Report 2004*.

⁹¹⁵ Law firms of Ružička Csekes and CMS, "Slovakia: New whistleblowing laws," 19 November 2014, http://www.rc-cms.sk/en/news-media/legal-updates/Slovakia_new_whistleblowing_laws/.

⁹¹⁶ Freedom House, *Nations in Transit Report 2015*, <https://freedomhouse.org/report/nations-transit/nations-transit-2015#.VgpYWOsWstV>.

⁹¹⁷ Anonymous (expert), interviewed by author, Bratislava, September 2016.

2004.⁹¹⁸ Moreover, there is evidence that starting with 2002, the Slovak police pursued relatively more cases of corruption. Yet none of them involved senior level officials. Despite the numerous changes introduced in the anticorruption legislation, the majority of Slovak citizens still considered that corruption and clientelism were among the most pressing social problems in Slovakia on the eve of EU accession.⁹¹⁹

Post-accession anti-corruption developments

In 2005, a year after Slovakia's EU accession, the Special Court of Justice with the jurisdiction to hear exclusively corruption cases started finally its activity. The court is responsible for hearing cases concerning organized crime, severe economic crimes as well as crimes committed by some categories of public officials. According to Transparency International, the Court has the necessary resources for effectively analyzing cases of corruption, the judges are adequately trained, and the proceedings are completed within an appropriate timeframe.⁹²⁰ Moreover, additional legislative acts were adopted in 2005:

“[t]he constitutional amendment that strengthened control powers of the Supreme Bureau of Supervision, the amendment to the Law on Free Access to Information, and the amendment to the Law on Public Procurement. The new Law on Political Parties seeks to make party financing more transparent. Also, law enforcement organs intensified their campaign against corruption, which resulted in bribery indictments against several high-ranking officials at both central government and self-government levels.”⁹²¹

As a result, public officials found themselves under increasing pressure to bear responsibility for their behavior, which was considered incompatible with the principles

⁹¹⁸ Anonymous (expert), interviewed by author, Bratislava, September 2016.

⁹¹⁹ Freedom House, *Nations in Transit Report 2005*.

⁹²⁰ Transparency International, *National Integrity System*, http://www.transparency.org/whatwedo/nisarticle/slovakia_2012.

⁹²¹ Freedom House, *Nations in Transit Report 2006*.

of transparency. The cabinet witnessed two personnel changes as a result of corruption scandals.

Between 2006-2010 however, no new headways were made in combatting corruption. Freedom House considers that some initiatives actually may have reversed previous modest progress.⁹²² The Ministry of Justice, for instance, launched in 2006 a widespread campaign to dismantle the special Court of Justice and the Office of the Special Attorney considering that these anti-corruption institutions became successful tools in combatting corruption. No clear motives for their abolishment were invoked.⁹²³ Additionally, the position of the administration regarding anticorruption is very unclear in this period, and no specific anticorruption policies or laws are adopted. Due to strong political support most cabinet members involved in corruption and clientelism scandals stay in office and do not lead to prosecutions. Moreover, transparency and competition in public procurements declines. By 2009 the previous negative trends worsen even more.

2010 brings a breathe of fresh air with a new cabinet in office that declares no tolerance for corrupt behavior in public administration. Reforms in line with the Council of Europe's Group of States against Corruption (GRECO) recommendations are undertaken. The parliament introduced criminal liability of legal persons in 2010, and considerably amended the Criminal Code in 2011. Several anticorruption initiatives to increase transparency are also adopted. The law on free access to information and the civil judiciary are amended in 2011 to increase transparency.⁹²⁴ An important governmental anticorruption initiative was the 2011 strategic plan to address corruption. It encompassed the following measures: “publication of state contracts, reform of the

⁹²² Freedom House, *Nations in Transit 2007-2011 Reports*.

⁹²³ Freedom House, *Nations in Transit Report 2007*.

⁹²⁴ Freedom House, *Nations in Transit 2011-2012 Reports*.

judiciary to increase the transparency of court decisions, competitive selection of judges and presidents of courts, as well as stricter rules for judicial governance and clear provisions for public procurement”⁹²⁵. Starting with 2011 hence, all state institutions had to publish public contracts online. This was considered a major breakthrough for Slovakia, according to anti-corruption experts.⁹²⁶

Clientelistic and corrupt practices continue to persist however. After a change in governments, the implementation process of the strategic plan slowed down towards 2013. Certain passed amendments are still under the review of the Constitutional Court. An interdepartmental working group of experts composed of public officials such as ministry functionaries and the General Prosecutor’s Office has the responsibility of assessing the undertaken tasks of the strategy. NGOs are meant to participate as observers in the work of this interdepartmental group. However, no meetings were held since the end of 2011. In this context, some local public administration units have designed individualized anti-corruption strategies in partnership with NGOs. These partnerships have led to more active public debates to be organized across different regions of the country.

In 2012, GRECO concluded that while considerable efforts were undertaken to improve the legal framework for criminal law and public procurement, as well as to make the judiciary more transparent, none of its recommendations on party financing were adequately implemented. More recently, in 2013, the European Commission also recommended addressing “a number of challenges related to the functioning of public

⁹²⁵ European Commission, *Anti-Corruption Report 2014*, 2.

⁹²⁶ Anonymous (expert), interviewed by author, Bratislava, September 2016.

institutions, law enforcement, efficiency of justice and the business environment.”⁹²⁷ In the most recent Anti-Corruption Report, the European Commission repetitively brings in focus challenges regarding independence of the judiciary, prosecution of corruption, transparency of party financing, misuse of EU funds, and public procurement.

Greater accountability for high-level corruption is much necessary. For 2014, Transparency International Slovakia raised Slovakia’s position in the Corruption Index ranking. This was mainly the effect of the newly adopted law protecting whistleblowers, the law on the formation of political parties, and the proposed e-marketplace for public procurement bids pending of course on their successful implementation⁹²⁸. There is no evidence that would suggest the impact of these reforms yet.

Since it reached its peak in anti-corruption performance in 2004, Slovakia is in a constant backslide, at least according to statistical indicators.⁹²⁹ In 2013, it reached the lowest level of anticorruption performance since 2002. In this sense we notice a 0.43 estimate change in the 2005-2013 period, one of the most serious backslides in the region in control of corruption. According to Freedom House, cronyism, nontransparent, clientelist and corrupt practices still persist in the public sphere “resulting in no notable prosecution of high-level offenders.”⁹³⁰ Evidence shows that the loopholes identified in its anti-corruption design mostly match the main foci of corruption after accession.

⁹²⁷ Assessment of the 2013 national reform program and stability program for Slovakia (Brussels, 29 May 2013), 8-9, http://ec.europa.eu/europe2020/pdf/nd/swd2013_slovakia_en.pdf.

⁹²⁸ Transparency International, *Corruption Perceptions Index 2014*..

⁹²⁹ World Bank, *World Governance Indicators*.

⁹³⁰ <https://freedomhouse.org/report/nations-transit/2015/slovakia>

To conclude, the empirical analysis of the Slovak case finds evidence that supports the hypothesis put forward in this study. Since the end of the 1990s Slovakia has developed a progressive institutional framework for combating corruption and improving transparency in the public sphere. The process of accession in the EU provided the main impetus for reforms to be adopted. After accession, however, the adopted reforms did not materialize into practice because they embedded numerous loopholes, and corrupt practices continued to persist once the EU's conditionality has faded away. Moreover, anti-corruption performance has worsened. Evidence shows that this was the case because the adopted reforms did not address the localized foci of corruption. Hence, Slovakia's foci of corruption look at best similar before and after accession. Moreover, the nature of corruption has changed by becoming a more complex phenomenon. It requires more advanced tools and methods of investigation as well as more intense resources that the Slovak law enforcement and oversight agencies do not possess. Hence after accession, Slovakia continues to struggle with highly politicized state institutions, and "undesirably close ties" between political and economic interests of the elites. Internal control and monitoring mechanisms do not function effectively, and do not constitute viable checks on power.

The Slovak case, in this regard, supports the first hypothesis. Despite advanced institutions that follow most international standards, we did not find evidence of reforms that would effectively address the institutional weaknesses that allow corrupt behavior to persist. The deficiencies in the institutional design left unaddressed before accession hence mostly explain the worsening anti-corruption performance after accession.

Conclusion

In this chapter we assessed the reform process of institutional anti-corruption designs among backsliders as a first step into testing the first hypothesis. This chapter found evidence that all three states have established comparatively advanced institutional anti-corruption designs but which have significant ‘loopholes’ embedded in them. Corruption represented a salient problem in the 1990s for two of the three cases – the Czech Republic and Slovakia. This constitutes a severe problem for all three countries today.

Moreover, we find that all cases experience an increased number of foci of corruption both before and after accession. Czech Republic, in this regard, experiences corruption mainly in public administration, the legislature, prosecution, party financing and public procurement. Hungary struggles with corruption namely in public administration, law enforcement and prosecution, party financing and public procurement. Slovakia, the worst performer, faces corrupt behavior in public administration, legislature, judiciary, law enforcement and prosecution, as well as party financing and public procurement. Moreover, a commonly identified trend in all three cases is the existence of alarmingly close ties between political and economic elites.

Finally, evidence shows that the current foci of corruption, in this regard, are a result of the deficient internal monitoring and oversight mechanisms that were poorly or not reformed at all before EU accession. Despite the proliferation of institutions in these countries meant to fight corruption, and that correspond to most advanced international

standards, there are no effective internal checks until today that would be able to contain corrupt practices.

Institutional Anti-Corruption Designs: A Comparative Perspective

Introduction

Building on the findings of the within-case analysis of individual cases, this chapter finds evidence that differences in institutional anti-corruption designs explain why some CEE countries are less effective at controlling corruption than others after accession. The hypothesis (H_1) tested here is the following:

(H₁) States that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession.

To test this hypothesis, the initial steps were undertaken in Chapters 6 through 8. The three chapters employ a within-case analysis of the frontrunners, middle group, and backsliders of anti-corruption performance. These assess the institutional designs of each of the eight cases addressed in this study, and identify the existing legal loopholes that allow elected and appointed officials to seek more rents from public office. The chapters assess in this regard the institutional reforms that were adopted in the period between 1991-2014 and how they explain anti-corruption performance of each individual case.

After identifying the legal loopholes experienced by each of the cases, this chapter employs the *structured, focused comparative analysis* to show that there are

intra-group similarities among the backsliders, the middle group, and the frontrunners. It identifies the main common institutional loopholes, and explains how they differ from one cluster group to another as well as from one time period to another in explaining anti-corruption performance. The chapter finds evidence that the frontrunners have an improved anti-corruption performance after accession because they have addressed more relevant institutional loopholes than the other two groups. In contrast, the laggards backslide in their control of corruption because numerous institutional loopholes remained unaddressed.

This chapter also finds that the laggards in anti-corruption performance have, in particular, passed reforms mostly in areas less controversial and less sensitive to the incumbents leaving areas such as the legislative process or public administration vulnerable to corrupt practices after accession. Untailored reforms left institutional loopholes that allow officials to more frequently abuse power and office. Finally, this chapter finds that the legislation that ensures internal oversight of state institutions experiences more frequent and serious loopholes than other anti-corruption institutions across the CEE region. From the temporal dimension of the argument, we find partial support for the argument that states that passed reforms earlier in their transition phase to experience fewer legal loopholes and overall stronger institutional designs than states that passed most anti-corruption reforms later, as part of their EU accession process.

Anti-Corruption Strategies

Deriving from the preceding within-case analysis, this chapter shows that all states have enacted, on paper, advanced anti-corruption legal frameworks that fully meet international standards either before or immediately after accession. Currently all states have a national strategy or program for fighting corruption at the national level. To different degrees, they all lag however when it comes to implementation of the proposed measures. Moreover, strategies differ in their precision, the driving institutions behind their design, and the foci of corruption they address. In this sense, evidence shows that the frontrunners have developed and implemented more precise and coordinated national anti-corruption programs, more focused on eliminating corruption issues that were salient at the time, and that the reforms were driven by domestic rather than international actors.

Estonia's most current 2013-2020 strategy stipulates very specific working plans and provides measurable indicators, while focusing on prevention and education rather than sanctioning. That is the case because it already has very precise sanctioning mechanisms inbuilt in its legislation. In contrast, the current Czech anti-corruption strategy limits itself to listing and recycling actions previously stipulated in past strategies due to the impossibility to reach a consensus for effective reform. Hungary has a well-developed current strategy; yet, it does not address the main actual areas of corruption such as weak law enforcement and the lack of stricter checks on party financing. Moreover, some states such as Poland have strategies elaborated by state institutions, the Ministry of Interior in this case, while others, such as Latvia, have strategies designed by independent anti-corruption institutions. This difference in driving institutions for reform, EU or domestically driven, leads to different approaches and incentives in tackling and prosecuting political corruption.

None of the countries in the region had a unified national anti-corruption strategy in the 1990s. Most often it was separate state institutions that had developed individual anti-corruption programs (Poland, Estonia) and were following non-coordinated activities. This led to the development of institutional rivalry (still present in Czech Republic and Poland) and ineffective efforts to fight the phenomenon in a coordinated approach. All states hence developed their first strategies only during the pre-accession period (Estonia, 2004; Czech Republic, 2006; Hungary, 2001; Latvia, 1998; Lithuania, 2002; Poland, 2002; Slovakia, 2000; Slovenia, 2004). Also, targeted goals differed and oftentimes did not correspond to the foci of corruption that the country faced: Hungary focused on prevention in the private sector despite prevalent corrupt practices among political parties and decision-makers; Poland had no coordinated anti-corruption activities envisioned and placed no focus on high-level corruption; Slovakia had very vague assessment criteria defined and measures heavily influenced by the executive; Latvia did not address state capture though it was considered the most serious concern for anti-corruption efforts to succeed.

The EU accession process was the main driving force for the development of national anti-corruption strategies in Latvia, Lithuania, and Slovakia. The adoption of national strategies was highlighted as clear EU requirement for accession for these cases. In this context, it is considered that Lithuania had adopted one of the most comprehensive strategies developed by any EU accession candidates. Similar to Latvia, it focused on prevention, prosecution, enforcement, and education. Lithuania also aimed to eliminate the pre-existing legal loopholes that granted excessive authority to public officials. But like most of the other countries in the region, its first strategies experienced heavy

implementation delays, and enforcement was considered inadequate. Slovakia and the Czech Republic, in this context, have failed at their implementation phase altogether.

EU impact on the development of anti-corruption policy

EU enlargement and the conditional incentives it provided are acknowledged as key factors in (re)shaping institutions in the CEE region.⁹³¹ Deriving also from this analysis, the EU accession process has had an overall important impact on the development of the anti-corruption policy in the CEE region. This influence varies however across cases as findings suggest. Moreover, there is no evidence for cross-cluster patterns. For Estonia and Slovenia, the European Commission did not identify corruption as a problem for their EU accession process. In the Estonian case, for instance, the Commission drew attention to the need to enforce compliance with existing anti-corruption regulations within local public administration. Hence any anti-corruption reforms passed in the pre-accession period were more broadly contextualized in the overall process of harmonization of national legislation to the *acquis communautaire*.

In all other cases, however, the EU accession process played a salient role for the undertaken anti-corruption reforms. EU pressure was oftentimes accompanied also by direct financial assistance for the implementation of reforms (CZE, LAT, LIT). In this sense, reforms were adopted as preconditions for EU accession to address loopholes such

⁹³¹ Heather Grabbe, *The EU's Transformative Power Europeanization through Conditionality in Central and Eastern Europe* (NY: Palgrave Macmillan, 2006); Frank, Schimmelfennig and Ulrich, Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe," *Journal of European public policy* 11, no. 4 (2004), 661-679; Frank Schimmelfennig and Ulrich Sedelmeier, eds., *The politics of European Union enlargement: theoretical approaches* (Routledge, 2005); Milada A. Vachudova, *Europe Undivided: Democracy, Leverage and Integration after Communism* (Oxford: Oxford University Press, 2005).

as the lack of internal checks on the executive (CZE, LIT, LAT, POL), lack of national strategies altogether (CZE, LIT), ineffectiveness of law enforcement institutions (CZE, SVK), the inadequate legislation on party financing (CZE), lobbying (LIT), and public procurement (LAT, LIT), or more generally, sectors such as the judiciary (CZE, POL), and civil service (LAT, POL). In the Latvian and Lithuanian cases, the anti-corruption agendas were almost exclusively driven by EU requirements and recommendations. Both countries are improving on their anti-corruption performance after accession while Slovenia, which already had an advanced anti-corruption framework before pre-accession, is currently backsliding.

It is interesting to note, in this regard, that the EU accession process represented an important trigger in the passage of anti-corruption legislation for the countries where corruption was a salient institutional problem before accession. With the exception of Poland and Lithuania, corruption is still highlighted as a serious concern for all the remaining cases. In light of this comparison criterion, hence, we find mixed support for the impact of EU conditionality on the effectiveness of institutional changes that were passed as pre-conditions for EU accession.

Bribery Legislation

The current bribery legislation of all cases corresponds to most international conventions such as the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. Penal codes were amended (Czech Republic, Latvia, Lithuania, Poland, Slovakia, and Slovenia; all during pre-accession) or

completely revised (Estonia) to introduce stricter rules and clearer provisions on corruption prevention. Moreover, most legislative changes were made during the pre-accession period under EU pressure, but several countries have adopted important legislative acts after accession as well. In this sense, the general legislative framework on anti-corruption of the new EU member states closely resembles the framework of their Western counterparts.

The most important differences among the eight cases regards the timing of reforms, the applicability of the law (elected or appointed officials, legal entities, citizens) the degree of criminalization of corruption (passive, active, indirect bribery), and penalties applied. Evidence suggests that with the exception of the backsliders, all other states enacted most important but also stricter changes to their bribery legislation before accession thus raising the cost of corrupt exchanges. Estonia experienced in this context the fastest anti-corruption progress during its early transition years due to the comprehensive legal framework it adopted for the prevention and prosecution of corruption. The current Estonian and Slovenian criminal codes, in this sense, stipulate some of the most comprehensive provisions on defining corruption, delineating the actors that it refers to, and the sanctions envisioned for infringing the law. These were adopted mostly in the early 1990s but also reformed in the pre-accession period. Slovenia, in this context, largely transposed the provisions of Framework Decision 2003/568/JHA concerning the definition of active and passive corruption in the private sector, as well as those regarding penalties applicable to natural and legal persons and liability of legal persons. Since 2002, the Latvian criminal code was amended to sanction active and

passive bribery, in both private and public sectors. Lithuania and Poland have adopted similar amendments in the pre-accession period.

Hungary, in contrast, passed sharp anti-corruption reforms in the early 1990s but also after its EU accession. Its anti-corruption legislation was considered comparatively advanced already for the 1990s. It still displayed however numerous legal loopholes that were easily exploitable by interested parties. Despite advanced legal frameworks, in this context, all states currently have legal loopholes in their more particular institutional designs of anti-corruption legislation. These concern mostly regulations of conflicts of interest, party financing, lobbying, whistleblower protection, and internal control mechanisms, which are further compared.

Regulations on conflict of interest and asset declaration

Currently all eight cases have advanced conflict-of-interest (COI) frameworks put in place. Regulations were developed mostly in the 1990s but were significantly amended after accession. Among the countries with the most comprehensive regulations are Lithuania, Poland, Estonia, and Slovakia, hence mostly countries that improved their anti-corruption performance. The failure of public officials to submit full or incomplete economic declarations was treated as criminal offense only in Estonia since its early transformation years, for instance, one of the toughest regulations in the region. Yet, COIs were frequent occurrences across the entire region two decades ago. Most commonly encountered issues were related to vague definitions of COI, information on assets and income not made publically available, ineffective enforcement of the

legislation, lack of sanctions for submission of false declarations, narrow categories of functionaries covered that oftentimes did not include family members either, the possibility to engage in economic activities in parallel to the term in office, as well as weak or no independent institutions at all to verify COI and asset declarations. In this regard, the lack of follow through and sanctioning was the most serious problem across all cases.

With the exception of Poland, all states have passed important amendments to their respective legislation after accession. Yet, most states have important institutional loopholes still left unaddressed. In this context, Estonia is criticized for decriminalizing in 2011 the acceptance of illegal donations by political parties, and for insufficiently applying conflict-of-interest rules to MPs. The Czech Republic's 2007 newly adopted COI legislation does not require spouses of public officials, judges or state attorneys to submit economic declarations. Hence its current COI regulations are considered very weak. Also, there are no verification mechanisms for declarations submitted by MPs, and no sanctioning for false asset declarations. Moreover, MPs are allowed to engage in parallel economic activities.

Hungary has no penalty mechanisms for submitting false or incomplete asset declarations. It is also criticized for initiating investigations only on the basis of a complaint received by the monitoring agency. At the same time, there is no independent institution to verify asset or COI declarations concerning senior elected and appointed officials. Latvia is mostly criticized for the political interference on behalf of senior officials in the oversight process as well as for the formalistic compliance with the existing legislation. Despite an advanced legislation that was key in important corruption

trials, incomplete asset declarations are still a concern in Lithuania. Also, more reforms are necessary to ensure effective monitoring and enforcement, according to more recent assessment reports.

Poland, Slovakia, and Slovenia all lack enforcement of sanctions despite advanced legal frameworks in place. In Poland's case, despite advanced compliance monitoring mechanisms, there is no institutional coordination of comparing submitted financial declarations, while at local government level asset declarations are mostly not submitted at all. Slovakia and Poland do not make asset declarations publically available online. In Slovenia, COI regulations do not apply to MPs, while asset declarations oftentimes are not submitted at all by public officials. To sum up, COI and asset declaration legislation were positively amended after accession in most countries. Yet, salient legal loopholes still persist in institutional designs, a fact that explains why public administration, especially the higher echelons of power, and the legislature are considered the main foci of corruption in the majority of cases after accession.

Audit and internal control mechanisms

Auditing agencies

From a legal perspective, all states have to date well-established audit and internal control mechanisms for the financial control of the use of public funds. Poland and Slovenia have developed these in the early 1990s while the majority passed important reforms during the EU pre-accession period only. In this regard, all states have a main audit agency but with different degrees of functional independence and delegated

competences. Audit institutions, in this sense, are mostly only indirectly responsible for detecting cases of corrupt practices. They represented, however, the main anti-corruption institutions in early transition years when there were almost no specialized agencies established. They still play a critical role in detecting abuses of power when it comes to the misuse of public funds. Findings show that their competences and independence were diminished gradually in most states at the expense of more specialized anti-corruption agencies. Moreover, the results they report to legislatures trigger no subsequent sanctions or further investigations by appropriate law enforcement agencies until today in most of the cases.

All backsliders, the Czech Republic, Hungary, and Slovakia have State Audit Offices (SAOs), which are ineffective at addressing financial irregularities or checking upon the misuse of state funds more generally. Despite rigorous appointment and dismissal procedures, the Czech SAO's independence was limited after accession by having to share competences with other agencies, not being able to impose sanctions, and having its recommendations not followed through. The Slovak and Hungarian SAOs experience similar decreases in autonomy due to increased political meddling and political pressure through political appointments of the leadership. The Estonian SAO cannot audit local governments, a focus of corruption that persists in the country also after accession. Moreover, the auditing agency never took an active role in initiating financial investigations until this specific competence was assigned to it explicitly through legislative amendments adopted during pre-accession. The Latvian SAO cannot audit MPs, a major locus of corruption, and is financially dependent on the government. In 2001, Slovakia included off-budget funds in the state budget, thus incorporating them

in the national system of financial control, and closing a major source of corruption from earlier transition years. The Polish SAO is considered the most independent and impartial agency due to its term of office that does not coincide with the normal electoral cycle.

In this sense, the central audit mechanisms are mostly in place, but their importance in preventing abuses of power was diminished throughout the region. Each state, in this sphere, experiences institutional weaknesses that create new avenues for the misuse of public funds. Among the most important ones are the inability to impose sanctions (Czech Republic, Latvia, Lithuania, Poland, Slovakia), no follow-through of SAO recommendations (Czech Republic, Latvia, Lithuania, Poland, Slovakia, Slovenia), and non-disclosure of SAO findings (all except Estonia, Lithuania, Poland, and Slovenia). In light of the evidence, we may conclude that the states that display better anti-corruption performance after accession also have more powerful SAOs though all with important loopholes that undermine their capacity to contain corrupt practices.

Internal control mechanisms

The lack or ineffectiveness of internal checks within the executive and the legislature is among if not the most widespread problem in all cases in this study. In this sense, deriving from the individual case studies, evidence shows that most states currently deal with inadequate or ineffective internal control mechanisms in public institutions that allow for the misuse of public office to persist. This issue also concerns the states where corruption is not considered an acute problem, such as Estonia or Slovenia. Despite reforming or introducing internal control mechanisms from anew in all

state agencies during the pre-accession period (Czech Republic, Estonia, Latvia, Lithuania, Slovenia) these are still far from being fully operational. Internal checks on the executive are considered to be the ones that most lack effectiveness (particularly in the Czech Republic, Lithuania, Latvia, and Slovakia). In the Czech case, for example, despite the adoption of the long-awaited Law on Civil Service in 2014, the internal checks stipulated to address politicization and corruption in public administration do not prevent undue influences to persist. In this sense, most of the more recent reforms, passed after accession, do not address effectively the pre-existing institutional weaknesses. Hence poor checks on power explain why the legislature and public administration still represent foci of corruption for most of the states.

Anti-Corruption Agencies

Evidence suggests that states with more independent and more effective anti-corruption agencies are the ones that register improved anti-corruption performance scores. In the early 1990s almost no country had a specialized central agency responsible for containing corruption practices. Besides the main auditing agency, it was mainly the criminal or ordinary police (Czech Republic, Hungary, Slovakia, Estonia), and units within prosecution offices (Hungary, Slovakia) that were dealing with the investigation of cases of corruption. These, however, had no sufficient autonomy to pursue cases of grand corruption. An exception to this was Estonia where the police dealt effectively with the investigation of corruption cases. This was not the case with local administration however since it was the Estonian local police handling corruption at that level.

To date, almost every country has a central anti-corruption agency whose main task is to manage the anti-corruption policy and coordinate activities with other institutions. These were set up either during pre-accession or immediately after (CZE, LIT, EST, SLO). Initially, most of them were largely ineffective and very dependent on the executive. Slovenia, in this context, set up the Center for Prevention of Corruption (CPC) in 2004. The institution it replaced was heavily dependent on the executive. CPC, despite continuing to be state funded, is not subordinated to any state institution and during post-accession years grew as the most trustful anti-corruption watchdog in the country. Yet, the country registers a decline in its anti-corruption performance after accession, which cannot be explained by an effective anti-corruption agency.

Moreover, Latvia's KNAB became one of the most trustful anti-corruption institutions during post-accession, though until 2002 it was heavily dependent on the Ministry of Justice. Unlike any other anti-corruption agency in the region, it drives the national anti-corruption agenda and has its recommendations followed-through. Likewise, Lithuania's STT is considered the most independent anti-corruption agency in the region, with impressive results carried through in the last five years. In contrast, the Czech and Hungarian agencies are heavily dependent on the executive and considered mostly ineffective.

Some of the main current problems identified with the activity of anti-corruption agencies are their weak coordination of activities due to unclear division of tasks that leads to the diffusion of responsibility on delivering measurable efforts (Czech Republic, Hungary, Lithuania, Latvia until 2002, and Poland), institutional rivalry among the too

many institutions having the same targets and responsibilities (CZE, POL), and the lack of capacity to enforce sanctions (CZE, HUN, LIT, POL, SLO).

Another serious problem that permeates anti-corruption efforts across the board is the design of the institutional framework that allows undue influence on behalf of the executive either through political appointments of the leadership of these institutions (HUN, POL), unilateral ministerial decisions regarding the anti-corruption policy agenda set up (CZE, POL), or the actual implementation process (CZE). The Ministry of Justice, in this regard, plays a salient active role in anti-corruption in Estonia, Latvia, and Slovakia. Some states have also parliamentary oversight committees involved in delivering anti-corruption efforts (EST, HUN, LAT, LIT). Only Lithuania and the Czech Republic have their Ombudsman Office involved in controlling corruption, yet these deliver very different results. Unlike the Czech Ombudsman, the Lithuanian is quite effective, but its recommendations are still largely ignored.

Civil Service Reform

With very few exceptions (EST), evidence suggests that the legal frameworks regulating civil service in the early transformation years were largely inadequate across the cases. Conflicts of interest and political appointments in the lower and middle tiers of public administration were frequent occurrences. Driven by external incentives of the EU accession process, all countries passed important reforms in the late 1990s and early 2000s. These addressed the depoliticization of the civil service (CZE, LAT, LIT, POL, SLO), the lack of integrity of public officials (CZE, LAT, SLO), as well as the lack of

transparency in daily matters and the use of public funds (LAT). Yet, reforms are considered to have never spun off or have largely failed in half of the cases (CZE, HUN, LAT, POL). In Hungary, in this context, politicization of appointments has gradually increased since 1998 and the accountability and openness of the executive has diminished. Moreover, politicization of the lower level civil service in the Czech Republic was still the norm after accession, security of tenure was not envisioned, no ethical code was adopted until 2012, and there were no protections passed for whistleblowers. A new comprehensive reform of the civil service was adopted in 2014 that introduced merit-based competition and transparency in appointments of lower and middle-level civil servants. To date, however, political pressure on behalf of senior officials, and informal clientelist structures are still frequent occurrences. In Poland, despite attempts at the depoliticization of the civil service, several reforms were in fact reversed during pre-accession. Patronage, in this regard, is still a salient current problem in Polish public administration.

In other cases, reforms have either improved anti-corruption performance (EST, LIT, SLO), or shifted corruption from the lower tiers of administration to the higher ranks (LAT, SVK, LIT). In this context, reforms passed in Lithuania have largely depoliticized civil service during pre-accession. Yet, numerous connections between businesses and the political elites were revealed in the first years after accession that put under question previous developments. Moreover, the state has an extensive regulatory framework that grants excessive authority to public officials and creates conditions for continuous abuse of power. This issue started to be addressed only much later with more reforms adopted in 2010 that aimed at significantly reducing the number of existing regulations. For

Slovenia, inadequate internal control and supervision mechanisms are still the most important loopholes in the institutional framework of public administration that have been so far left unaddressed.

Evidence suggests that Estonia is a deviant case for the region since most reforms in public administration were passed during early transition years and were unrelated to the EU accession process. Civil service in this regard is seen as impartial and politically neutral. Regardless of the positive appraisals, Estonia faces salient challenges as well. A main concern is local governments that lack effective supervision and control mechanisms. These were also the main source of cases of corruption brought to courts during pre-accession. Also, the strong local connections between economic and political elites that have transformed local governments in the epicenter of corruption still persist. Unlike Estonia, Slovakia has a highly centralized public administration system. Local governments are delegated very limited powers, and this concentration of power at the central level has not changed throughout years. Moreover, it is considered to be associated with the weak anti-corruption efforts in the country.

Many states introduced more recent reforms in the civil service to cover pre-existing institutional weaknesses that were not previously addressed, such as lack of oversight of policy implementation, continuing politicization, or ineffective control mechanisms (EST, LAT, SLO, CZE). The impact of these more recent reforms is not known yet due to delayed implementation. Latvia, for instance, introduced open competition for the appointment of senior officials in public administration in 2013. Yet, it never addressed the phenomenon of state capture that is considered to stay at the heart of grand corruption in the country.

To conclude, evidence suggests that the main concerns identified as persistent in almost all cases are the extensive powers of the executive over other branches of government and the lower levels of public administration, as well as the lack or ineffectiveness of internal control and oversight mechanisms. This is also the case for countries like Slovenia and Estonia that are considered more advanced in their anti-corruption performance. Civil service, in this regard, is considered one of the most corrupt spheres in all the eight case studies. Yet, there is very little direct hard evidence of corrupt practices (CZ, EST, and HU in particular), and even fewer convictions. Findings suggest however that excessive executive influence throughout the last twenty-five years, as well as salient concentrations of power in the executive, are widespread phenomena (Slovakia, Hungary, Poland).

State-controlled agencies and off-budget funds

One more serious concern identified in public administration is the *state-controlled agencies* and the *off-budget funds*. The latter are excluded from the state budget, usually do not require parliamentary approval, and are not subjected to parliamentary oversight. In this sense they represent a major locus of political party patronage. Together with state-owned companies, these represented major sources of corruption for many post-communist states especially in the 1990s. Evidence shows that the reason state-owned companies still represent a source of corruption today is because the institutional framework that guides their activity can easily facilitate their misuse in favor of the executive. Terms of appointment of the board management are usually the

main loophole. They make these agencies vulnerable to politicization, and as shown, are frequently used to enrich ruling parties' coffers. Some states have closed this gap (Latvia) while others still have to implement major reforms (Slovenia, Poland, Lithuania, Hungary, Estonia) to improve the currently ineffective supervision mechanisms and limit undue influence. There is no evidence that a weak institutional framework that guides these executive institutions or funds is characteristic only to the backsliders. Moreover, very few states, as shown, have effectively addressed loopholes in *state-controlled agencies* and the *off-budget funds* that subsequently improved their transparency.

Whistleblowing regulations

Whistleblower legislation represents important safeguards that help detect cases of corrupt practices in either of the branches of government. It is not clear whether advanced institutions in this area would have a salient impact however, since the culture of whistleblowing in this region is very much not tolerated due to countries' communist past where whistleblowing was condemned by society as a practice. We find evidence that Hungary and Slovakia's existing legislation does not make a difference since it is ineffective. At the same time, these countries are backsliding on anti-corruption performance.

During the 1990s most countries did not guarantee any protections for whistleblowers. Currently, the Czech Republic and Latvia have no legislation regulating whistleblowers protection either. Poland as well does not have a specific law but offers general provisions in the labor code on unfair dismissal that so far prove to be

insufficient. Estonia on the contrary, stipulates provisions only in the Anti-Corruption Act, but still, has no specific law on whistleblowing. Hungary and Slovenia do have regulations developed but they are ineffective. Finally, Lithuania and Slovakia have comparatively advanced laws protecting whistleblowers. Existing laws, in this sense, have been developed and adopted mostly after accession but their effectiveness is still under question (EST, SLO, LIT, SVK, HUN). In regard to whistleblowing, hence, we find no evidence of salient differences among the three groups in their institutional framework.

Regulations Guiding the Legislative Process

Evidence shows that legislatures are more commonly part of the problem rather than effective mechanisms of controlling corruption. Yet, there is little to no hard evidence of corruption among MPs especially in the 1990s. Assessment reports show however that legislators are oftentimes highly vulnerable to corruption (CZE, LAT, HUN, SVK) or display concerning practices that undermine their capacity to address the problem. The reason for this lack of evidence, as explained by interviewed experts, is the more sophisticated and complex nature of corrupt exchanges, which lean towards more trade in influence rather than in pure bribery. Therefore the detection of such cases also requires advanced tools and knowledge, both oftentimes lacking particularly in the countries backsliding on corruption.

Among persistent loopholes the most often encountered ones are unregulated lobbying, inadequate immunity rules, inadequate COI regulations, weak monitoring

mechanisms, lack of integrity guidelines, and lack or poor regulations guiding the close interactions between the higher echelons of power with the business community. According to external assessment reports, “in no country is the legislative process designed sufficiently well to limit corrupt influence on the content of legislation by commercial interests.”⁹³² These loopholes were hardly addressed since they represent a very sensitive area of reform for legislatures due to the checks they would impose on themselves.

In this context, most states experience even inadequate or insufficient application of conflict of interest regulations for MPs and the lack of sanctions in cases of infringements (CZE, EST, HUN, LAT, SLO). Hungary, Latvia, Slovakia and Slovenia are among the most affected by the existence of strong informal ties between political elites and business interests. This is partly a problem for Estonia as well. The Czech Republic, Hungary and Slovenia are affected by weak monitoring mechanisms that could keep MPs accountable. Slovenia, in this context, has no ethics codes developed yet for elected officials while Estonia’s rules of conduct for MPs are considered to be insufficiently defined. Moreover, excessive immunity or lack of clear guidelines when it can be suspended was identified as a problem in Latvia, Lithuania, Slovakia, and the Czech Republic (before the 2013 amendments to the Constitution for the latter case). Unregulated lobbying is among the most serious institutional loopholes affecting the activity of parliaments and represents an issue across most cases.

Lobbying Regulations

⁹³² Open Society Institute, *Monitoring the EU Accession Process*, 66.

Evidence shows that in all cases in this study, the legislative process is vulnerable to lobbying pressure to varying degrees. We find that for Estonia and Lithuania to a certain extent, and for Latvia, in particular, unregulated lobbying by business interests was seen as one of the main institutional loopholes before accession that transformed or maintained the legislative process a focus of corruption. Until today, not too many states (CZE, EST, LAT, SVK), in this regard, have a framework that regulates lobbyists' activity and their interactions with elected officials. Some (HUN, LIT, POL, SLO) have passed lobbying legislation to introduce more transparency to the legislative process and more regulation of the lobbying process itself. Yet, the adopted regulations do not address all institutional loopholes. The Hungarian and Lithuanian regulations, for instance, do not specify who counts as a lobbyist, and does not envision any sanctions (HUN only). The Polish regulatory framework covers only the legislative decision-making process per se, which can be easily bypassed. The Slovenian lobbying legislation is quite advanced and has theoretical prospects of a regional best practice, but ironically enough, it is not put in practice. Hence lobbying regulations are marred with loopholes, which explains why the legislature is one of the most affected areas by corrupt practices.

Regulating political-economic ties

For most cases in this study, evidence highlights the intersection between political and economic interests to be highly problematic, and hence critical to understanding the magnitude of corrupt exchanges and how they are explained by existing institutions. Most cases, but the backsliders in particular, display a similar trend: the gradual

cartelization of the political space. The context and evolution of the process however is quite different for each case. Latvia displayed features of a captured state since the 1990s. The situation has slightly improved as a result of the general anti-corruption mechanisms adopted during the pre-accession period. Yet, measures that would directly address state capture have not been adopted. The transportation and banking sectors until today exert the most powerful lobbying on the legislative process. These are also the two largest contributors to party and campaign financing. Evidence shows that the financial crisis has gradually strengthened the power of economic groups and their grip on the legislative process.

For Hungary, the phenomenon of state capture is highlighted in assessment reports only during the last few years, since the Fidesz party is in power. For the Czech context, the emergence and consolidation of clientelist networks of state officials and business groups represents a gradual process that has worsened throughout time. These cooperate in awarding public contracts and influencing regulatory decisions. Ever-closer informal networks between economic and political interests, as well as clientelist social relationships represent a fast growing concern also in Slovakia and Slovenia. Patronage and nepotism are a very serious problem also in Lithuania and Hungary. Strong connections exist even in Estonia but mostly at the local government level due to their highly autonomous status and lack of local internal checks on power. As evidence shows, the relations between politics and business interests are very poorly or not at all regulated across most cases, and therefore represent an important source of corruption.

Regulations on political party financing

In light of the evidence from individual case analyses, political parties are among the most corrupt and non-transparent organizations across the region. More specifically, weak or non-transparent political party financing regulations, the lack of supervision and monitoring of party and campaign financing, as well as non-transparent lobbying regulations are the main institutional loopholes that most countries face whose parties are seen as important loci of corruption. The legal framework in the 1990s was mostly inadequate in all states, and very weakly regulated. There were almost no restrictions on the amount or sources of donations (CZE, EST), no institutional capacity of oversight of party and campaign spending, no need to publish party accounts (EST), and no sanctioning envisioned in the legal framework (SLO). Also, public officials oftentimes were illegally rechanneling funds towards political parties through state-controlled companies (CZE, POL).

In the EU pre-accession period absolutely all states passed major reforms to address institutional loopholes that allowed parties to previously act non-transparently. The most commonly encountered reform was the introduction of or the increase in state subsidies (CZE, EST, HUN, LAT, LIT, POL). However state funding varied in degree: for some states the government became the largest source of funding (CZE, HUN), while for most it represented one of the multiple sources (LIT). Additionally, states introduced stricter regulations on anonymous or third party donations, banned financing from state-controlled institutions, limited campaign spending, and introduced institutional mechanisms for controlling and overseeing party financing. The reforms undertaken

during the pre-accession period for most countries are the only reforms that have been adopted to address corrupt practices of political parties.

Yet, evidence from the individual case studies shows that despite the reforms that have been adopted numerous loopholes still remain unaddressed after accession. The Czech Republic still allows donations from foreign foundations, which makes financing insufficiently transparent. In this sense, corruption in party and campaign financing re-emerged as a serious problem for the country. Despite adopting an advanced legal framework, Estonia did not place any limits on party expenditures, and envisioned no sanctions for infringing the law. Hungary's conflicting provisions also create legal loopholes and inadequacy in the regulation of campaign financing, while stipulating no effective penalization and enforcement mechanisms to address illegal financing. Also, state subsidies, as the main source of funding, are largely insufficient and inadequate which is argued to be encouraging clientelism. Parties also use associated foundations to redirect funds from anonymous donors and avoid reporting spending. Lithuania did not cap party spending and, in practice, monitors only the use of state funds. Moreover, the mechanisms ensuring compliance and transparency are very weak. Slovenia has no sanctioning system put in place in case of law infringements. These institutional weaknesses perpetuate the problem.

Moreover, most of the states have not adequately addressed the effectiveness and independence of monitoring and oversight mechanisms adopted or reformed during pre-accession (CZE, EST, LAT, LIT, POL, SLO). Either because of legal ambiguities, weak or no capacity to apply sanctions, limited competences to verify campaign-spending declarations, and having recommendations largely ignored by legislatures, existing

oversight mechanisms are mostly inadequate or non-functioning. These weaknesses explain why political parties are still believed to be at the heart of political corruption in many of these states. Few states like Hungary, Estonia, Latvia, Lithuania, and Slovenia have partially addressed some of the remaining legal loopholes in later rounds of reforms. Yet, inadequate oversight of party financing still persists as a commonly encountered institutional weakness across the region.

To conclude, this chapter finds that all analyzed institutional designs experience weaknesses to different degrees. The inappropriateness of institutional checks on the executive and the legislative is a concern common to most states, in this regard, but more serious for the backsliders. The conflict-of-interest legislation, the internal audit and control mechanisms, all have been reformed numerous times in the pre-accession period, and also after accession, but new regulations are either not enforced, or do not address the loopholes that allow for power to be abused. Moreover, most anti-corruption institutions are ineffective at controlling corruption. In cases where they manage to impose themselves as salient actors, there is still little to no cooperation on behalf of law enforcement authorities. These represent more serious and frequent problems in the backsliding cases but they also persist in the other two groups to a certain degree.

Moreover, despite advanced legal and institutional anti-corruption frameworks put in place, there is an alarmingly growing tendency towards more concentration of power under the umbrella of the executive. The main issues identified in this regard are the strong connections between political and economic interests, undue influences on behalf of senior echelons of public administration on other institutions, illegal lobbying,

and non-transparent party financing. The lobbying framework in particular is either inappropriate or missing altogether, leaving hence caveats that can be easily exploited. Moreover, almost no institutional designs stipulate clear or tough sanctions in cases of infringement of existing regulations. When there are penalties inbuilt as measures of prevention, most often the law is not enforced. The institutions meant to prevent abuse of power do hence experience salient shortcomings that are exploited by the political elites. These are more frequently found among backsliders and middle group states than in the frontrunners.

Conclusion

This chapter compared the institutional designs and their embedded weaknesses that help explain why some states experience worse anti-corruption performance than others after accession. As a result, it finds support for hypothesis H₁: States that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession. First, chapters X, Y, and Z analyzed longitudinally the institutional anti-corruption designs of all eight cases by comparing reforms that were carried out before and after accession and how they explain control of corruption. Second, this chapter compared in a structured, focused comparison the specificities of anti-corruption institutional designs identified in the longitudinal studies and distinguished intrinsic legal loopholes they carry along across the three groups. Finally, it identified which of the identified institutional weaknesses explain better the different patterns of corruption found in the three groups.

This chapter assessed the institutional developments taking place in each of the eight cases across specified criteria. In this context, we find evidence that *the frontrunners* in anti-corruption performance have established strong institutions to prevent corruption in the 1990s and before their EU entry. The strength of their institutions is characterized by decreasing number of legal loopholes that allow discretionary decision-making power to be abused. Stronger institutions, as a result, have addressed corruption in numerous sectors that were affected by the phenomenon. Evidence shows that the remaining foci of corruption are related to the deficient internal monitoring and oversight mechanisms that were poorly reformed before EU accession. Loopholes are particularly evident in the regulations on political party financing. Poland in this context, is experiencing weaker internal checks than Estonia as evidence shows. To date, corruption does not represent a salient problem for either of the two cases. Both states yet experience a small number of foci of corruption after accession that need further attention. Estonia, in this regard, still experiences corruption in party financing and local public administration. Poland struggles with corruption in party financing, public procurement, and state-owned companies.

For the *middle group*, we find evidence that shows that all three cases have established strong institutional designs by addressing existing ‘loopholes’ in their anti-corruption mechanisms before accession. When compared to the frontrunners, salient reforms have continued after accession as well. Corruption however represents a salient problem for all cases in this group today, unlike for the leaders in anti-corruption performance. Furthermore, as a result of salient reforms, especially before the EU

accession, all cases (we find only tentative evidence for Slovenia) experience fewer foci of corruption after accession than before. Latvia currently, in this regard, experiences corruption mainly in the higher echelons of public administration and the legislative process. Lithuania still struggles with corruption namely in local public administration, the legislative process, law enforcement, and public procurement. Slovenia foci of corruption are the legislature, party finance, law enforcement, local administration, and state-owned companies.

Evidence shows that these remaining foci of corruption (findings inconclusive for Slovenia), in this regard, are explained by deficient internal monitoring and oversight checks that were poorly or not reformed at all before EU entry. All three cases however have established strong anti-corruption agencies that particularly in the second half of the 2000s started delivering effective results. Yet despite the proliferation of institutions in these countries meant to fight corruption, and that correspond to the most advanced international standards, the internal checks are still quite weak until today.

For the *backsliders group*, we find evidence that all three states have established comparatively advanced institutional anti-corruption designs but which have significant ‘loopholes’ embedded in them. Corruption represented a salient problem in the 1990s for two of the three cases – the Czech Republic and Slovakia. This constitutes a severe problem for all three countries today. Hungary, in this regard, is a puzzling case for our hypothesis since it set up very advanced institutions to fight corruption in the 1990s yet it registers the most backsliding on previous anti-corruption reforms. Despite addressing institutional shortcomings, the capacity of internal control mechanisms and law enforcement agencies is severely diminished after accession. There is also a severe abuse

of power on behalf of the executive attested more recently. Hungary's case is not that puzzling after all. The anti-corruption backslide of Hungary is very much embedded in its more general democratic backslide that is related to actions undertaken since Orban's Fidesz party came to power. Both internal and external checks on power are severely politicized, fact that severely undercuts their capacity to contain the executive from abusing power.

Moreover, we find that all cases experience an increased number of foci of corruption both before and after accession. Czech Republic, in this regard, experiences corruption mainly in public administration, the legislature, prosecution, party financing and public procurement. Hungary struggles with corruption namely in public administration, law enforcement and prosecution, party financing and public procurement. Slovakia, the worst performer, faces corrupt behavior in public administration, legislature, judiciary, law enforcement and prosecution, as well as party financing and public procurement. Moreover, a commonly identified trend in all three cases is the existence of alarmingly close ties between political and economic elites.

Finally, evidence shows that the current foci of corruption, in this regard, are a result of the deficient internal monitoring and oversight mechanisms that were poorly or not reformed at all before EU entry. Despite the proliferation of institutions in these countries meant to fight corruption, and that correspond to most advanced international standards, there are no effective internal checks currently that would be able to contain corrupt practices.

To conclude, in light of the institutional assessment, we find that states that adopted designs with fewer institutional loopholes before accession are more likely to

control corruption effectively. Moreover, weak internal checks and supervisory mechanisms within public administration institutions and the legislature are a most common characteristic for the backsliders, in particular, but they represent a more regional pattern as well. Generally, findings suggest the persistence of corruption to be a consequence of weak internal checks able to hold political elites accountable, fact that makes them highly susceptible to corrupt behavior.

Testing Hypothesis II:
Can Independent Judiciaries Explain
Change in Anti-Corruption Performance?

Case Selection for Nested Analysis Model

The first part of this dissertation has shown that to be a strong anti-corruption performer, it is important to have (A) anti-corruption institutions with relatively few loopholes. The evidence brought traced the link between particular institutional weaknesses and particular areas where corruption remained (as opposed to areas of institutional strength corresponding to areas where corruption was largely eliminated). Having strong institutions hence increases your chance to be better at containing corrupt practices. This second part of the dissertation is set to demonstrate that in addition to anti-corruption institutions with fewer weaknesses, having also (B) an independent judiciary increases a state's chances even more at better anti-corruption performance after accession.

A 2x2 chart dividing the cases by strength of institutions before accession and independence of the judiciary before accession is not possible because it would eliminate a lot of the idiosyncratic complexity that has been identified in the first part of this dissertation. An attempt at categorizing institutional strength is presented in Table F.6. The categorization of judicial strength before accession, presented in the Table, needs to be interpreted with caution, however, as data are based on one indicator (Freedom House, Judicial framework and independence) which somewhat differs from other indicators provided by other sources (such as World Bank Governance Indicators, for rule of law).

Moreover, there are not a lot of cases that have a strong judiciary, but a weak anti-corruption set up, and likewise there are no cases in our sample that have strong institutions with very few loopholes but a completely politicized judiciary. In our sample, these tend to go together fact that complicated the analysis of the separate impact of each of the two variables. In this context, the countries that tend to have weaker institutions are also the countries that have politicized judiciaries. In these cases, public officials exploit existing loopholes, and then there is no possibility to prosecute them because the judiciary will not come in to protect the objectives of the legislation. Public officials, in these cases, get away easy with exploitation of public office. In other countries, there are not many loopholes to start with, and insofar as there are few loopholes, if officials try to exploit them, the judiciary intervenes.

This chapter details the analysis behind the nested analysis model that this study employs to select three representative cases that would allow generalization of findings to the remaining cases in the testing of hypothesis H₂: *states that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession*. First, it explains the statistical analysis that underpins the model. It details the errors that might cause model misspecification by explaining the results of the regression diagnostics tests. Second, to compensate for potential bias, the study complements statistical findings with a brief qualitative analysis of the cases. This subsection helps identifying the typical positive and negative cases. The analysis concludes that Estonia, Poland, and Slovakia are the cases to be employed in the testing of the second hypothesis.

The nested analysis model allows this study to narrow down its research to three cases for in-depth analysis while preserving generalizability of findings.⁹³³ To explain the mechanism at work between judicial independence at time of accession and anti-corruption performance after EU accession, the study seeks to research the cases that confirm the association identified in the literature. I first identify the typical cases (that lie on or in immediate proximity of the regression line, small residuals) through a basic bivariate linear regression. I run the regression on three different samples and for three different moments in time. Because of the very small-N and the implicit statistical errors such an analysis might very likely carry along, I run the regression (1) on all 28 EU member states (EU28), (2) on the eight EU member states that joined in the 2004 enlargement wave (EU8), and finally (3) on all 11 member states that joined the EU in 2004 and onwards (EU11, adding Romania, Bulgaria, and Croatia to the sample in Model 2). The selection of this periodization strategy is embedded in the methodology shared by historical institutionalism studies.⁹³⁴ The following years were selected as reference moments for institutional origination (1995 (t_0) – the setup of institutions after the communist era), institutional change (2004 (t_1) – the EU pre-accession conditionality reforms), and current institutional setup (2014 (t_2)).

Moreover, to identify the “on-the-line” cases, we run OLS regressions of control of corruption on rule of law for three points in time: 1995 (using the 1996 WGI scores), 2004 (2005 WGI scores) and 2014 (2015 WGI scores). Then, we compare the positioning of cases at t_0 , t_1 , and t_2 to identify which of the cases fit closest to the regression line across

⁹³³ Lieberman, “Nested analysis.”

⁹³⁴ Lieberman, “Causal Inference in Historical Institutional Analysis.”

the three periods. We obtain nine snapshots for three different samples (EU28, EU11, and EU8) in three different points in time (1995, 2004, and 2014) to compare. Despite the high risk of model misspecification due to the lack of control variables, limited number of cases, and limited degrees of freedom, we do not include any additional explanatory variables. We are also not introducing control variables for the alternative hypotheses because of a potential perfect multicollinearity problem. In this sense, the WGI scores for media and civil society, as main alternative domestic control and oversight mechanisms, are highly correlated with the rule of law and control of corruption indicators. In this context, it is important to mention, that the model might be affected by omitted variable bias. We run the necessary regression diagnostics to test whether the proposed regression meets basic OLS assumptions, and whether it is limited by potential model misspecification errors.

We use the World Bank's Governance Indicators for control of corruption (DV) and rule of law (IV) to run the statistical analysis. The descriptive statistics for the dependent and independent variables as well as the regression analysis results for all three samples at time t_0 , t_1 , and t_2 are summarized in Table F.1.

Descriptive statistics

Dependent variable (V5 – Control of corruption). For the EU28 sample, we notice that the mean for control of corruption almost does not change between 1995 and 2014. For the reduced EU8 sample, on the other hand, we notice a significant positive change in the means from 1995 to 2004 but no change registered after accession. Also, the mean for

EU8 is three times lower than the mean for EU28 in 1995, and twice lower than the mean for EU28 both in 2004 and in 2014. If we look at the EU11 sample mean, we note a similar trend: a very low mean for 1995 (0.06), a significant increase for 2004 (0.38), and almost no change afterwards for 2014. It is interesting to notice a significant decrease in the maximum score for the dependent variable between 1995 and 2004 for the EU8 sample, from 1.31 to 0.97. The maximum then increases again to 1.25 for 2014. For the EU28 sample there is a continuous downward trend in the maximum however. For the EU8 sample, there is a dramatic increase in the minimum from -.82 in 1996 to 0.22 in 2004, followed by a slight decrease to 0.1 in 2014. This data shows quite a lot of variation in the dependent variable both between the samples but also within the samples.

Independent variable (V6 – rule of law). For the explanatory variable, we analyze the descriptive statistics for the rule of law indicator. It is important to mention that it is not a direct measure of the changes in the judiciary, but it is the score that provides the longest and most consistent data available. Therefore we are careful with the interpretation, as well as complement this analysis with further qualitative data. Unlike for the dependent variable, we see a constant increase in the mean of rule of law score over time across all three samples. For the minimum, we see a sharp increase in the minimum across all three samples between 1995 and 2004, but less radical change between 2004 and 2014. For the EU8 sample, we see a similar trend in the change in the maximum values as for the dependent variable. The score decreases from 1.04 in 1995 to 0.92 in 2004, and then increases again, significantly this time, to 1.32 in 2014. There is a constant upward trend between the three periods in the maximum scores for the EU28

sample. Similar to the dependent variable, we notice significant variation both between and also within the three samples.

Regression analysis

As Table F.1 shows, the estimates for all nine OLS regressions are positive and statistically significant. Results show that higher values of rule of law are associated with higher values for control of corruption in all three samples. All R-squared ratios prove that we can explain a great deal of variation using this data (lowest $R^2=0.69$, highest $R^2=0.91$). In this sense, the OLS regression line fits the data well. Yet, we interpret findings with considerable hesitation considering the small-N.

We first examine how well cases are positioned vis-a-vis the OLS regression line (see Figures for all samples in Annex G.1). For the EU28-1995 sample (Sample 1), among the new EU member states considered in this study, we notice that Poland, Lithuania, Czech Republic, Hungary, and Slovenia have the smallest residuals, and are the best candidates for in-depth case study analysis. For the EU28-2005 sample (Sample 2), it is Poland, Slovakia, Latvia, Hungary, Slovenia and Estonia that have the smallest residuals. In the EU28-2015 sample (Sample 3), Hungary, Slovakia, Poland, Latvia, Slovenia, and Estonia have the smallest residuals. Generally, we find that most of the CEE states (except Czech Republic) represent “on-the-line” cases in the larger context of the EU. The regression based on the EU8 samples, helps us narrow down the number of cases that fit closest to the regression line. For 1995 (Sample 4), Poland and Lithuania are the cases with the smallest residuals. For 2005 (Sample 5), it is Poland, and Latvia. For

2015 (Sample 6), it is Hungary, Latvia, and Slovakia.

If we expand the previous sample to EU11 (by adding Croatia, Bulgaria and Romania to EU8), we notice that for 1995 (Sample 7), Poland, Czech Republic and Hungary have the smallest residuals, and represent a good fit for further case study analysis. For 2004 (Sample 8), Hungary and Slovakia are the typical “on-the-line” cases. In the case of the 2014 sample (Sample 9), it is only Czech Republic and Estonia, from the 2004 enlargement wave that have higher residuals and constitute outliers for further analysis. All others constitute a good fit. For each sample, we also examine the residual-vs.-fitted values plots, which indicate the observations of the dependent variable that are further away from the predicted values (see Figures for all samples in Annex G.1). Also, an analysis of the residual plots shows that the choice of a linear regression model is appropriate for the data (points are randomly dispersed around the horizontal axis). The residual plots, in this sense, portray a fairly random pattern.

To make a representative case selection for further in-depth analysis, we also visually examine how cases within the EU8 sample have comparatively moved along the regression lines in the three separate OLS regressions. We notice a great deal of within country variation in particular, for Estonia, Poland, Hungary, and Slovenia. This information is important because this study wants to maximize variation both in the independent and dependent variables, but also within the variables themselves.

Regression diagnostics tests

As part of regression diagnostics, we have conducted the necessary tests to check

for: (a) normality of residuals, (b) unusual and influential data, (c) heteroskedasticity, and (d) model specification. We specify in Table F.2 the tests that have been conducted. Further, Table F.3 shows the results of the tests traditionally carried out for this purpose.⁹³⁵ In this context, for the EU28 sample, the most robust regression results are the ones for the 1995 sample. The other two samples (2004, 2014) might suffer from model misspecification errors. Bulgaria, Croatia, the Czech Republic and Malta have been identified as influential cases (large residuals and high leverage as general measures of influence) for the regression coefficients, and therefore will not be considered as potential candidate cases for in-depth analysis based on the statistical analysis. For the following six samples (EU8 and EU11 across 1995, 2014, and 2014) there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. The regression diagnostics tests hence mostly confirm the goodness of model fit for these samples over the different periods of time. Several influential cases have been identified that should not be considered for further in-depth study based on the statistical analysis alone: Slovakia, Latvia, Estonia, and Slovenia. Lithuania, Poland, and Hungary are the cases that fit best the in-depth case study analysis. Considering the implicit risks of such small-N samples, however, these findings are complemented with qualitative analysis of the dependent variable for a more refined case selection.

Qualitative case selection analysis

This additional step is taken to ensure that the cases selected are representative of the causal mechanism for the entire region. The issue with simple statistical analysis for

⁹³⁵ See Appendix A for further in-depth explanation of the regression findings and diagnostic results.

case selection, according to Hoover and Perez, is that the best performing or the most robust model is not automatically the true model.⁹³⁶ In this context, Rohlfing argues that, it is necessary to supplement the comparison of the regression results with comparative graphs as well as with qualitative analysis.⁹³⁷ According to Friedman and Schuster as well as the more current methodology literature, “validation of models require auxiliary information, which typically does not come from analysis of large data sets.”⁹³⁸ Also, our case selection wants to maximize the variance on the independent and dependent variables. According to Lieberman, in this context, in a model-testing small-N analysis model, cases have to be selected “based on the widest degree of variation on the independent or explanatory variables that are central to the model.” Hence, we complement the regression findings with a 2x2 crosstab analysis of X (judicial independence before accession) and Y (control of corruption after accession) where we identify positive and negative typical cases (see table F.4).

The crosstab divides cases into typical, disconfirming, and puzzling depending on the quadrant they fall into. Building on the scores countries are ranked by the WGIs during the period 1995-2004 for the rule of law (before EU accession), and during the period 2005-2014 for control of corruption (after EU accession), this study evaluated the state of corruption and of the rule of law (namely the judiciary here). These scores are complemented by an analysis of the *Nations in Transit* assessment reports produced by the Freedom House (for 2001-2004). According to Table F.4 and Table F.5, our *typical positive* cases are Estonia, Slovenia, and Poland. It is worth mentioning that both Poland

⁹³⁶ Kevin Hoover and Stephen J. Perez, “Three attitudes towards data mining,” *Journal of Economic Methodology*, 7.2 (2000), 195-210.

⁹³⁷ Rohlfing, “Pitfalls of Nested Analysis,” 1504.

⁹³⁸ Arik Friedman and Assaf Schuster, “Data mining with differential privacy,” in *Process tracing*, eds. Jeffrey T. Checkel and Andrew Bennett (Cambridge: Cambridge University Press, 2014), 212.

and Slovenia here are borderline cases as well. Slovenia, in this context, established an independent judiciary in the early 1990s, but registers a more recent slight increase in its level of corruption. Yet, its overall score, according the WGI control of corruption estimate makes it the country with the second best score in the CEE region after Estonia. Therefore, its slightly increasing level of corruption can be disregarded for the purpose of this study since it still scores high up from a regional perspective. Poland, on the other hand, has not implemented any significant reforms in the 1990s in the judiciary, yet its judiciary is considered to have been quite independent from the outset. Therefore it falls more in the middle-range group and represents a borderline case when it comes to measuring this independent variable.

Czech Republic and Slovakia fit under the *typical negative* cases since they both have not experienced adequate judicial reform in the 1990s but also experience increasing levels of corruption after accession. We have one *disconfirming* case, Hungary, which established an independent judiciary in the early 1990s but registers increasing levels of corruption after accession. We also have two *puzzling* cases, Latvia and Lithuania, which register stable anti-corruption performance after accession, but have not implemented meaningful judiciary reforms before accession. Lithuania, in this context, is also a borderline case since it has adopted important reforms strengthening judicial independence but which have not been implemented at time of accession. Since we are testing the association between an independent judiciary and anti-corruption performance, this study is interested in the further analysis of *typical* cases. We choose a contrasting mix of negative and positive cases, and seek to maximize variance on both dependent and independent variables.

Whereas Lithuania, Poland, and Hungary are the cases that represent the best fit for further in-depth case study analysis based on the statistical analysis, Estonia, Poland, and Slovenia are the typical positive cases that result after a brief qualitative analysis of the relationship between control of corruption and the rule of law. The Czech Republic and Slovakia are the typical negative cases that derive from the qualitative crosstab analysis. Hungary, in the latter analysis represents a disconfirming case, while Lithuania a puzzling one. Considering the implicit risks of the small samples we use for statistical analysis, we choose to give priority to the findings of qualitative analysis when necessary. In this sense, we keep Poland as the only typical case deriving both from the statistical and also qualitative analysis. For the selection of the remaining two cases, we give priority to the qualitative findings. In this regard, we proceed with Estonia as a positive case, and Slovakia as a negative case to also maximize variation on the dependent variable. This chapter hence concludes that Estonia, Poland, and Slovakia are the cases to be used for the testing of the second hypothesis.

Can Independent Judiciaries Explain Change in Anti-Corruption Performance?

In the first part of this dissertation I have shown that states with fewer weaknesses in their institutional anti-corruption designs distinguish the frontrunners from the laggards in anti-corruption performance. Strong institutions are not sufficient, however, as remaining loopholes can be exploited in the absence of functioning internal checks on power. This is particularly the case after accession when the EU pressure has faded away with these countries joining the Union. The second part of this dissertation comes to demonstrate that anti-corruption institutions work better in tandem with independent judiciaries that back them up when officials abuse public office. As a result of a strong tandem where the role of the EU monitoring is replaced by independent judiciaries, anti-corruption performance improves after accession.

Chapter 11 through 14 test the following hypothesis: *states that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession* (H₂). The chapters analyze and assess the judicial institutions and reforms of three cases chosen via an initial nested model analysis: Estonia, Poland, and Slovakia. Each chapter (a) assesses an individual case's legal framework that underpins its judiciary as a separate branch of government, (b) analyzes the main reforms that were adopted over time to

enhance the safeguards of judicial independence, and (c) explains which of the analyzed aspects elucidates the state's anti-corruption performance.

The method employed for the individual case studies is the within-case analysis. It is followed in a next step by a structured, focused comparative analysis in Chapter 14. The comparison criteria used to assess each case's institutional framework are as follows: (a) legal framework and organization (b) court administration (c) terms of judicial employment (d) judicial councils (e) financial autonomy of courts (f) the prosecution system, and (g) specialized units. To analyze the main enacted judicial reforms the chapter identifies the areas of reform, the issues they addressed, and the time period when they were adopted. Finally, based on examples, when available, each chapter connects aspects of the judicial framework with the state's control of corruption. When there are no examples of high-level prosecution, the chapter explains which aspects of the judicial framework are problematic and hinder high-level prosecutions. The data used to individually and comparatively assess cases are domestic legislation, national and international assessment reports on the state of the judiciary, secondary literature, as well as 55 in-depth elite and expert semi-structured interviews conducted in Estonia, Poland, and Slovakia in the period of September-October 2016.

All three countries' rule of law indicators for 1996-2015 are highly correlated with their control of corruption scores.⁹³⁹ Estonia and Poland, in this regard, serve as identified in the previous chapter as *typical positive cases* that are analyzed to identify the main aspects of the causal process between independent judiciaries and improving/stable anti-corruption performance. The difference between the two cases is the pace of judicial reforms (radical in Estonia vs. gradual in Poland) and post-accession anti-corruption

⁹³⁹ World Bank, *World Governance Indicators 1996-2015*.

performance (improving in Estonia, and stable in Poland). Slovakia, in contrast, serves as a *typical negative case*, and is analyzed to identify aspects of the causal process between a worsening rule of law score and declining anti-corruption performance. These three cases have been chosen to maximize variation both in the independent and dependent variables.

Besides different degrees of judicial independence before accession, the three cases also display different degrees of strength of their anti-corruption institutions. Estonia has the fewest loopholes identified in its institutional design. Evidence shows that in the very few cases of corruption that have been revealed, its strong judiciary has intervened to safeguard the objective of the legislation. Considering that both its anti-corruption institutions and its judiciary are strong and independent, it is impossible to differentiate the separate impact of each of the two factors on the anti-corruption performance of the case. It is clear however that in tandem they perform better making Estonia the frontrunner in anti-corruption performance in the CEE region.

Poland also portrays moderately strong institutions. Comparative to Estonia, these embed somewhat more loopholes that can potentially be exploited as shown in previous chapters. The judiciary, on the other hand, despite considered independent it portrays numerous entry points for excessive executive influence that tends to be particularly important in high-profile cases of corruption. Moreover, we cannot put to a test the independence of the judiciary since there are almost no cases of high-level corruption brought to courts. In the absence of such cases, we can only assume that anti-corruption institutions would be safeguarded if cases reached the court.

Slovakia, in contrast, displays much weaker anti-corruption institutions than the other two cases. It also has a heavily politicized judiciary and prosecution system. This coincidence does not allow us to clearly disentangle the separate impact of each of the two factors. We can however analyze their impact in tandem, and identify which judicial arrangements endanger the safeguard of anti-corruption institutions were they put to a test.

Finally, the following three chapters find evidence for the association attested in the literature that independent judiciaries are highly correlated with better control of corruption. Estonia and Poland do have overall more independent judiciaries than Slovakia, and evolving patterns in the judiciary follow the patterns in control of corruption. This analysis contributes to the literature by detailing which aspects of the judiciary enhance its independence and subsequently improve anti-corruption performance.

Individual Case Studies – Summary of Findings

Evidence shows that the independence of the judiciary in Estonia is steadily entrenched in the law and in its practice. Most salient reforms in this regard have been passed in the early 1990s and the EU pre-accession period. Also, Estonia's judicial arrangements reveal very few loopholes for undue influence on behalf of the executive. Two most important ones are the co-shared administration of the lower courts by the Ministry of Justice and the Judicial Council, as well as the management of the budgeting process for the lower courts solely by the Ministry. Unlike in Poland and Slovakia, however, the executive seriously considers the opinion of the judiciary in both realms. Finally, there is no evidence of politicization of the judiciary.

In the case of Poland, evidence shows that the independence of the judiciary is well established in the Constitution. Structural safeguards to ensure its independence have been adopted in the 1980s and very early 1990s, which allowed the Polish judiciary to also shape the further developments of the democratic transition that followed. Yet, more reforms were expected to be implemented that did not materialize. Embedded weaknesses hampered its potential to deal with cases of corruption more effectively in the 1990s. Poland's judicial arrangements, in this regard, reveal salient points of entry for undue influence on behalf of the executive. Among the most important ones are the judiciary's financial dependence on the Ministry of Justice, the increased role of court presidents as representatives of the executive, and a heavily politicized prosecution

system. Moreover, unlike in Estonia, the Ministry does not consider the opinion of judges when it comes to court financial matters. Also, we do find evidence of politicization of prosecution, in particular. Despite attempts at reforms after accession, the judiciary is still struggling to effectively contain political corruption.

Finally, in the case of Slovakia evidence shows that the independence of the judiciary is only structurally highly advanced. Both the judiciary and the prosecution are heavily politicized, and therefore the objective and impartial prosecution of cases of corruption is seriously obstructed. The main mechanisms that have been abused to concentrate discretionary powers are the disciplinary proceedings, non-merit based recruitment of judges, and appointment of court (vice) presidents based on political criteria. Another significant mechanism of influencing the independence of the judiciary is the excessive interference of the executive in judicial affairs, in particular via the administration of the courts. Moreover, similar to the Polish case, the prosecution system is the weakest link in the law enforcement process. It has never been subjected to reforms in the last two decades. The heavy politicization of the judiciary and prosecution explain hence why there are no prosecutions on charges of corruption despite rampant corrupt practices in the public sector.

11

Judicial Independence in Estonia

Based on the analysis of the Estonian case, this chapter finds evidence that supports the second hypothesis, and namely that states with stronger and more independent judiciaries are more likely to better contain corruption after accession. In testing the second hypothesis, Estonia represents a typical positive case that is used to identify the main aspects of the causal process between an independent judiciary and its improving control of corruption. Evidence shows that the independence of the judiciary in Estonia is steadily entrenched in the law and in its practice. Most salient reforms were passed in the early 1990s and the EU pre-accession period. Also, Estonia's judicial arrangements reveal very few loopholes for undue influence on behalf of the executive. Two most important ones are the co-shared administration of the lower courts by the Ministry of Justice and the Judicial Council, as well as the management of the budgeting process for the lower courts solely by the Ministry. Unlike in Poland and Slovakia, however, the executive seriously considers the opinion of the judiciary in both realms. Finally, there is no evidence of politicization of the judiciary.

Evidence shows that a strong and independent judiciary helps Estonia contain corrupt practices after accession in the highest echelons of power. The most recent cases of corruption that were revealed occurred in the areas where corruption remained a salient issue for the country after accession, and namely local public administration and state-owned companies. These are the areas where there are still loopholes entrenched. With the intervention of an independent judiciary, corrupt behavior is contained namely

in these areas where institutional weaknesses still persist. Interviews revealed that this effective sanctioning of political corruption is due to independent judges and prosecutors.

Introduction

Estonia underwent its most important reforms in the judiciary in the early 1990s hoping to clean the system from its Soviet past. This was reflected in the creation of a totally new system of courts, reappointment of all judges, hiring of young specialists who yet oftentimes lacked experience, and the promotion of the idea for the need to reconnect the system with its German legal roots after the collapse of the Soviet Union. In this context, Estonia put the fundamentals of an independent judiciary in the very early 1990s. Despite missing some important structural safeguards for the judicial branch, such as the creation of a self-regulatory body that would represent the judiciary as a separate branch of government in the Constitution, Estonia has consolidated throughout the years the independence of its judiciary with subsequent reforms. This includes reforms that have strengthened the independence of prosecution. Today, its judicial system enjoys high trust on behalf of the Estonian society, and is ranked 14th out of 113th according to the 2016 Rule of Law Index.⁹⁴⁰ It is also globally ranked 15th/113 when it comes to the capacity of the judiciary to constrain government powers. At the same time, Estonia's rule of law indicator for 1996-2015 is highly correlated with its control of corruption, according to the World Governance Indicators.⁹⁴¹

⁹⁴⁰ 2016 Rule of Law Index, World Justice Project, <http://data.worldjusticeproject.org/>

⁹⁴¹ World Bank, *World Governance Indicators 1996-2015*.

Empirical analysis of the institutional framework

Legal framework and organization. Until it regained its independence in 1991, Estonia experienced a short history of nearly twenty years of national judicial system during the interwar period that was later abolished by the Soviets under the forced occupation of Estonia. Since the early 1990s, in the course of rebuilding the state and its institutions, Estonians have drawn from their experience that they internalized throughout centuries spent under Swedish and German rule, in particular. This experience has significantly shaped the design and institutional arrangements of Estonian law enforcement and justice system.⁹⁴² In this regard, the 1992 Constitution, the Courts Act and the Status of Judges Act that were both adopted in 1991 envisage the establishment of a new three-tier court system, and offer explicit legal safeguards for an effective judiciary to function.

In this context, county courts, the lowest level, handle civil, criminal, and misdemeanor matters, and administrative courts hear disputes in public law. The circuit courts whose number has been reduced over time for efficiency purposes to hear appeals from the lower levels. Finally, the newly established rather than reformed Supreme Court, according to the Constitution, is both a court of cassation and a court of constitutional review. The chancellor of justice, the president, local government councils, the parliament, as well as lower-level courts can request the Supreme Court to investigate the constitutionality of specific legal acts.

One serious weakness of the legal framework from an institutional perspective that has been noted by international organizations, and that could have an effect on the

⁹⁴² Anonymous (public official), interviewed by author, Tartu, October 2016.

ability of the judicial system to sanction corrupt behavior, is that “there is no clear constitutional representative of the judiciary, and the executive’s interpretation of independence focuses unduly on individual judges, to the detriment of the institutional independence of the judiciary.”⁹⁴³ The risks that this chosen institutional arrangement poses to the independence of the judiciary, and perceptions of main actors of this loophole are discussed further below.

Administration of the court system. Until 2002 an important concern in regards to judges’ independence (at least from the perspective of international organizations) was that the administration of district and regional courts fell under the full jurisdiction of the Ministry of Justice. The Supreme Court is an exception until present, which is self-administered. This independence from the Ministry is an important safeguard that ensures its impartial applicability of the rule of law. Moreover, until the 2002 judicial reform, it was the Ministry that decided the location of district and regional courts, their territorial jurisdiction, as well as the number of judges and support staff at each court, given the approval of the Supreme Court first.⁹⁴⁴ According to monitoring reports of the European Commission and GRECO, the Ministry of Justice has not abused this authority even if this division raised concerns about maintaining separation of powers between the executive and the judicial branches. Only in some instances, the Ministry has urged judges to speed up proceedings but no signs of politicization have been attested.

Starting with the 2002 Courts Act, an important change has been adopted: all courts (except Supreme Court) were moved under the co-shared administration of the Ministry of Justice and the Council for Administration of Courts (the Council). In this

⁹⁴³ Open Society Institute, *Judicial Independence*, 160.

⁹⁴⁴ 2002 Courts Act, <https://www.riigiteataja.ee/en/eli/514022014001/consolide>.

sense, whereas the most salient decisions related to the court system and courts administration are first discussed and approved by the Council, the daily administration of lower courts stays within the competencies of the Ministry of Justice.⁹⁴⁵ Hence, the Minister continues to determine the territorial jurisdiction and location of the lower courts, as well as to decide on the total number of judges to be appointed to office at each of the aforementioned courts. The Minister also appoints the chairmen of the lower courts once approved by the Council.⁹⁴⁶

From the perspective of structural safeguards for judicial independence, the aforementioned institutional arrangement might pose certain risks of undue influence on behalf of the executive, and this has been raised as a concern in numerous assessment reports. Yet, based on the interview-collected data, there seems to be disagreement among judges whether the Ministry's discretionary administrative supervision might hamper judicial independence through possible interference or not.⁹⁴⁷ In this regard, it has been mentioned that indeed, instruments such as the budgeting process, or the merger of smaller courts might be interpreted as interference with judicial independence via administrative powers. Practically however, it is seen as necessary to take away the administration burden of courts from judges since it may cause in fact more problems.⁹⁴⁸ This perspective is also supported by the fact that many judges come from an academic background, and do not want to take additional responsibilities such as the full administration of courts. Instead, they would like to deal only with legal matters.⁹⁴⁹

⁹⁴⁵ Constitutional court system of Estonia, <http://www.nc.ee/?id=1343>

⁹⁴⁶ Constitutional court system of Estonia, <http://www.nc.ee/?id=1343>

⁹⁴⁷ Open Society Institute, *Judicial Independence*, 155.

⁹⁴⁸ Anonymous (public official), interviewed by author, Tallinn, October 2016.

⁹⁴⁹ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

Also, according to an interviewed public official, “in accordance with the general idea of parliamentarism, there has to be someone politically responsible for the functioning of courts concerning support services. In the German system, it is the Minister of Justice. You have to have where to complain about certain problems.”⁹⁵⁰ On the other hand, other voices from the judiciary claim that judges should have a stronger say on matters of the judiciary, since dialogues with the Ministry of Justice have not always been constructive. Moreover, “the Ministry is not even aware of all the problems that judges have.”⁹⁵¹ If judges would have full control over administration of courts, many more issues could be developed and improved on a long-term.⁹⁵² No judge, however, who has been interviewed, is aware of a case when the Ministry has exceeded its administrative supervision competences.⁹⁵³

Terms of judicial employment. The rules of appointment, promotion, and removal of judges are clear and transparently regulated by the 2002 Courts Act. Judges are appointed for life, and the rules for removal are not considered to be threatening judicial independence.⁹⁵⁴ Life tenure and protections against removal from office are enshrined in the Constitution. The Parliament appoints the Chief Justice of the Supreme Court on the proposal of the President of the Republic. The Parliament also appoints the justices of the Supreme Court at the proposal of the Chief Justice. The President of the Republic appoints all other judges at the proposal of the Supreme Court.⁹⁵⁵ In this context, according to an interviewed judge, “The real decision-making happens in the Supreme

⁹⁵⁰ Anonymous (public official), interviewed by author, Tallinn, October 2016.

⁹⁵¹ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁵² Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁵³ Estonian judges, interviewed by author, Tallinn, October 2016.

⁹⁵⁴ Open Society Institute, *Judicial Independence*, 150-184.

⁹⁵⁵ Constitutional court system of Estonia, <http://www.nc.ee/?id=188>.

Court. It is extremely important that the judges are making the choice. No bureaucracy is involved.”⁹⁵⁶ The institutional framework hence ensures that the recruitment and appointment of judges is isolated from potential undue influence on behalf of the executive. Moreover, judges have explicit limits on cross-branch and outside activity to ensure their decisional independence. These cannot hold any other elected or appointed offices. Yet, there are no fixed criteria for assigning or transferring judges. They cannot be, however, transferred without their prior consent.

Furthermore, compensation of Estonian judges’ is not perceived to be threatening their decisional independence. Wages are established by the legislature and are tied to the wages of members of parliament,⁹⁵⁷ despite an attempt to equalize them with Ministry of Justice salary rates.⁹⁵⁸ In this sense, “the respect for the profession was very much increased because it was linked to politicians’ rather than to executive’s salary rates.”⁹⁵⁹ Even from the start, the 1991 Legal Status of Judges Act has significantly increased both the salary and the social benefits of judges in comparison to the Soviet legislation. According to an interviewed judge, the 2002 judicial reform also created more heated debates about the wage rates than about enhancing structural judicial independence. As a result, in comparison to other CEE neighbors, judges are much better paid, especially after the 2002 Courts Act⁹⁶⁰ that has further increased judges’ salaries to enhance their economic independence.⁹⁶¹

⁹⁵⁶ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁵⁷ Open Society Institute, *Judicial Independence*, 170-171.

⁹⁵⁸ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁵⁹ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁶⁰ 2002 Courts Act, <https://www.riigiteataja.ee/akt/121062014012>.

⁹⁶¹ EU Justice Scoreboard 2015, http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_en.pdf (accessed on 17 October 2016).

In 2009 though, as a result of the financial crisis that has forcefully impacted Estonia, Chief Justice Mart Rask warned that austerity cuts planned to be implemented risk making the wages of judges less competitive than wages in the private sector. From judges' perspective, as derived from interviews, this fact seems to be acknowledged as an important factor able to undermine judicial independence.⁹⁶² One of the interviewed judges considers an appropriate salary for judges to be an important safeguard as "it created very strong guarantees for judges, especially during the financial crisis." Yet, the lack of adequate compensation would not put under risk judges' decisional independence per se, but rather make the profession of the judge much less attractive to a state that needs in the upcoming five years to renew one third of currently sitting judges due to retirement.⁹⁶³

Moreover, the working conditions of judges have improved considerably. In the 1990s these were lagging behind most of their counterparts' offices in Western countries, and required significant improvements considering the Soviet disregard for local courthouses. In this regard, the courts kept on being continuously renovated, and today, working conditions are much better than in most neighboring CEE countries.⁹⁶⁴ Yet, some judges consider these might need further improvements.⁹⁶⁵

Council for Administration of Courts. It is important to highlight that despite the co-shared administration of the lower courts by the Ministry of Justice and the Council for Administration of Courts (the Council), Estonia does not have a special state institution or administrative authority which would be solely responsible for the courts'

⁹⁶² Freedom House, *Nations in Transit Report 2010*.

⁹⁶³ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁶⁴ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁶⁵ Anonymous (judge), interviewed by author, Tallinn, October 2016

administration so far. The Council is just one of the several self-government bodies of judges. Yet, it is an important decision-making body, discussing and deciding on various aspects of administration of courts (general, financial, etc.). Moreover, its position and recommendations for the Ministry, according to two former Ministers of Justice, are never ignored.⁹⁶⁶

It has a balanced composition comprised mostly of judges: Chief Justice of the Supreme Court, five judges elected by the Court en banc, two members of Parliament, a representative advocate of the Estonian Bar Association, the Chief Public Prosecutor, the Legal Chancellor, and the Minister of Justice. This compositional balance represents a structural safeguard against potential politicization. Moreover, the Council grants approval for the determination of the territorial jurisdiction of courts, the structure of courts, the exact location of courts, the number of judges and the lay judges in courts, the appointment to office and premature release of chairmen of courts, the determination of the internal rules of courts, the determination of the number of candidates for judicial office, the appointment to office of candidates for judicial office, and the payment of special additional remuneration to judges. The Council is directed by the Chief Justice of the Supreme Court. Council sessions can be convened either by the Chief Justice or by the Minister of Justice.⁹⁶⁷

The self-governing bodies of judges have a salient role in the development of the court system through the decisions they take concerning the development of the judiciary. It is the Supreme Court, in this context, that has the role of guaranteeing the proper functioning of administration of justice in the court system, in particular by organizing

⁹⁶⁶ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016; Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁶⁷ Constitutional court system of Estonia, <http://www.nc.ee/?id=1343>.

the work of judges' self-governing bodies. The other bodies not mentioned so far are the Court en banc (comprised of all Estonian judges), the disciplinary chamber, judge's examination committee, and the judicial training council. The majority of these, function based on the administrative support of the Supreme Court.⁹⁶⁸

Financial Autonomy. With the exception of the Supreme Court, all lower courts have a limited say in the planning and administration of their own budgets and budgeting process, which oftentimes represents a tension between the Ministry and the courts.⁹⁶⁹ The first and second instance courts are financed from the state budget through the budget of the Ministry of Justice. Only the Supreme Court, being an independent constitutional institution, is self-administered and financed directly from the state budget.⁹⁷⁰ Moreover, "there are no objective criteria for any stage of the budget process, or any legislative or constitutional guarantees of funding levels."⁹⁷¹ The Ministry of Justice preserves control over the budgeting process as well as the allocation of funds, fact that grants it space for potentially significant influence over the courts. The Ministry of Justice may also audit the organizational and financial activities of the lower courts hence establishing an additional layer of accountability in favor of the executive.

Public Prosecutor's Office. The Soviet-type prosecution system was fully reformed in the early 1990s. The investigation was separated into two lines – supervision as prosecutors' line, and execution as security police's line. This was especially important because of the later change to adversarial court procedures.⁹⁷² According to the 1998

⁹⁶⁸ Constitutional court system of Estonia, <http://www.nc.ee/?id=1343>.

⁹⁶⁹ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁷⁰ Constitutional court system of Estonia, <http://www.nc.ee/?id=1343>.

⁹⁷¹ Open Society Institute, *Judicial Independence*, 167.

⁹⁷² Anonymous (judge), interviewed by author, Tallinn, October 2016.

Prosecutor's Office Act⁹⁷³, the Prosecutor's Office is a government agency in the area of government of the Ministry of Justice (paragraph 1(1)). The Prosecutor's Office is independent upon performance of its duties assigned by the law, and its actions are based on laws and on legal acts adopted on their basis. The Prosecutor's Office *directs* pre-trial criminal proceedings, ensuring lawfulness and effectiveness thereof; represents public prosecution in court, participates in planning surveillance activities necessary for prevention and identification of crimes, and performs other duties assigned to the Prosecutor's Office by the law. However, the law does not clarify the meaning of 'directing.' In regards to criminal procedure, the Prosecutor General cannot provide guidelines and instructions because they are not explicitly stipulated in the law. Yet this right indirectly stems from the hierarchical structure of the prosecution system, as well as the right to direct prosecution. International organizations however highly recommend clarifying the meaning of this competence to be explicitly stated in the law.

Furthermore, as a body directing criminal proceedings, the Prosecutor's Office guides investigative bodies in gathering evidence and, according to identified circumstances, decides on bringing charges against a person. The prosecution service hence has monopoly over this procedural decision. The Prosecutor's Office prosecutes crimes in close cooperation with also other investigative bodies such as the Security Police. This fact, according to an interviewed former Chief of Police, has improved the effectiveness of prosecution but also of police.⁹⁷⁴

The Prosecutor's Office Act empowers the Prosecutor General and leading prosecutors with the right for prosecutor substitution. This right has been used only once

⁹⁷³ Law first adopted in 1993, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/516062016001/consolide>.

⁹⁷⁴ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

in the high-profile case involving the then Minister of Finance when the Prosecutor General took over the prosecution from a public prosecutor of the Prosecutor General Office. The case also raised concerns when the Prosecutor General decided to terminate on the grounds that there was not enough evidence for subsequent criminal proceedings. The right of devolution, on the contrary, is more commonly exerted, as most of the criminal cases from local prosecutor's offices are reassigned to public prosecutors of the Prosecutor's General Office when these cases meet the criteria of 'high public interest.'⁹⁷⁵

The Prosecutor's Office is a two-tier body, consisting of the Office of the Prosecutor General as the higher tier and four district prosecutor offices as the lower tier. The Prosecutor General directs the Prosecutor's Office, and is appointed to office for a five-year term by the Government on the proposal of the Minister of Justice after considering the opinion of the Legal Affairs Parliamentary Committee (§16(1)). Chief prosecutors direct district prosecutor's offices, and are appointed to office also for a five-year term after a competitive selection process. This is now under consideration of reform to extend the term in office to seven years so that prosecutors' terms do not overlap with government in office terms. This reform is expected to enhance the independence of prosecution even more, by fully detaching prosecutors' work from any potential government interference.⁹⁷⁶ Moreover, the Prosecutor General nominates the chief state prosecutor, state prosecutor and chief prosecutor to be appointed to office by the Minister of Justice. There are currently 171 prosecutors in service, and five of them are specialized prosecutors.⁹⁷⁷

⁹⁷⁵ Artem Anyshchenko, "Transformation of the Ukrainian public prosecution according to the European democratic standards in comparison with the Baltic states," Master's thesis (University of Twente, 2010).

⁹⁷⁶ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁷⁷ Prosecutor's Office, <http://www.prokuratuur.ee/en>

According to the Prosecutor's Office Act, it is the Ministry of Justice that exercises also supervisory control over the Prosecutor's Office. Yet, it does not have the right of substitution or devolution and may not intervene in particular criminal cases. The supervisory control does not extend however to the activities of the Prosecutor's Office in planning of surveillance, pre-trial criminal proceedings and representing of public prosecution in court (paragraph 9(1)). The Prosecutor General exercises supervisory control in the Prosecutor's Office, and chief prosecutors – in district prosecutor's offices.

The early 2000s brought important changes to the prosecution system. The 2003 Code of Criminal Procedure transferred the main leadership for pre-trial investigation from police to the Prosecutor's Office.⁹⁷⁸ This reform brings an important change in the anti-corruption framework since the specialization of prosecutors in the fight against corruption was still considered to be very limited at the beginning of the 2000s.⁹⁷⁹ According to an interviewed policy-maker, the reform was very successful:

“We wanted the prosecutors office to have more responsibility because before the police was building the case, and were not connected to prosecutors. Then they sent it to prosecutors who went to court – so there were no connections. We changed it this way so that from the first day a case is open, it would be led by the prosecution. Of course the real detective work is still done by the police, but under the daily control of the prosecutor's office. This was a good change because prosecutors are more involved in evidence collection. Police officers see too much black and white usually. We gave the police the possibilities to deal more with criminal intelligence.”⁹⁸⁰

According to the same interviewee, initially this change spurred tensions between police and prosecution due to differences in organizational cultures. This was also the period when Estonia passed from a purely inquisitorial system to an adversarial system of adjudication inspired by common law criminal procedure. This was considered to be the main reform affecting the prosecution system. Despite discussing the need for this reform

⁹⁷⁸ 2003 Code of Criminal Procedure, §30(1), www.riigiteataja.ee/en/eli/ee/Riigikogu/act/531052016002/

⁹⁷⁹ Freedom House, *Nations in Transit Report 2004*.

⁹⁸⁰ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

in the late 1990s already, prosecution was ready to take over the corresponding competences.⁹⁸¹ At the time, this reform was expected to enhance the efficiency of proceedings but was also worrying in terms of the preparedness of the prosecutors.

According to an interviewed policy-maker,

“At the beginning of the 2000s prosecution has also been made more professional. Bigger salaries, and they feel more important, higher standards, professionalism higher, also possibilities to grow professionally. We see the good outcomes of those reforms 6-7 years later only.”⁹⁸²

Furthermore, there is a common understanding that the reform of the prosecution was a successful one both in terms of institutional transition and also how it functions in practice, very professionally done. Yet it seems there are issues with the availability of resources at the disposal of prosecutors, and this is important in complex criminal cases.⁹⁸³ An independent and effective prosecution is also seen especially important in complex cases of corruption. According to an interviewed judge, “Cases go in full court only when they are big ones, and in these cases, the prosecution plays a very important role.”⁹⁸⁴ Yet, according to an interviewed senior public official, transparency is lacking behind the decision to take a criminal case in full court or use plea bargain instead as an alternative to criminal procedures: “This is the main problem when fighting corruption as well.”⁹⁸⁵

Specialized units. There is no specialized court dealing solely with cases of corruption in Estonia. The idea has been discussed numerous times but no decision has been taken because of pragmatic reasons such as the shortage of judges⁹⁸⁶, the small size

⁹⁸¹ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁸² Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁸³ Anonymous (public official), interviewed by author, Tallinn, October 2016.

⁹⁸⁴ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁸⁵ Anonymous (public official), interviewed by author, Tallinn, October 2016.

⁹⁸⁶ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016

of the country⁹⁸⁷, and the apparent lack of a stringent necessity for a specialized court per se in this case. According to an interviewed judge:

“From a judicial perspective it is even more important that you can specialize in the level of counselors to the judges. It is important that you have a specialist advisor on the issue. Small countries cannot use the same model here as the big countries. But we do have a *mafia collegium*, judges that are sitting on organized crime cases. Estonia has this *soft specialization* where certain cases go to certain judges, so it is not institutionalized. The division of cases is decided on court meetings where these [case assignment] are discussed.”⁹⁸⁸

Still, both the Prosecutor’s Office and the police have units specialized on corruption. These have been set up in the early 2000s, and are considered to have significantly improved the quality of investigation and prosecution of cases of corruption. This has consequently led to more societal trust in law enforcement agencies: “The police is more effective, and considering that the people trust it, they communicate to police cases, and help them detect cases.”⁹⁸⁹

In this context, the Estonian Police Board is traditionally in charge of small corruption offences, and since a 2000 amendment to the Code of Criminal Procedure, also of corruption cases involving municipal officials. The workload of the police appears to become heavy, in particular with additional efforts to address effectively local corruption. Furthermore, the Security Police is mostly responsible for investigating corruption cases (in particular the “high profile” cases). This became a priority of the Security Police in 1999 following the extension of the Security Police’s jurisdiction in 1998. The Security Police Board carries out preliminary investigation of corruption related crimes only if they have been committed by public servants or individuals referred in the Anti-corruption Act. The Security Police appears to be a well-trained and

⁹⁸⁷ Anonymous (judge, Tallinn Administrative Court), interviewed by author, Tallinn, October 2016.

⁹⁸⁸ Anonymous (judge, Tallinn Administrative Court), interviewed by author, Tallinn, October 2016.

⁹⁸⁹ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

well-equipped modern police force. They receive specialized training in corruption investigations. According to a senior public official, these are critical units especially nowadays when the nature of corruption has become much more complex, and instances are more difficult to trace:

“As a former criminal investigator, I can say that in the early 1990s, we were doing only statistics. I was 24 when appointed the head of the homicide unit. It took me 3-4 years to learn how to collect evidence professionally. Only then you can say you started working. And the same thing is with corruption – more cases does not mean it’s more corruption. The cases started being more complicated. And I am happy it is not only the security police dealing with these cases.”⁹⁹⁰

Hence, the Estonian case shows that specialization is indeed necessary and salient for raising the quality of investigations, especially in a sophisticated and hidden environment of corrupt exchanges. Both prosecution and police forces, as well as specialized cadres within courts are highly trained in how to investigate highly complex cases of corruption.

Empirical analysis of main judicial reforms

The most radical reforms in the judiciary have been adopted in Estonia in the early 1990s. Since the new court system created a whole new tier of courts, the adopted design required all of the judges to be appointed anew. In this context, all of the Soviet period judges who wished to resume their careers had to be reappointed.⁹⁹¹ Furthermore, as part of the judicial reform process, all applicants, including former magistrates who practiced law during Soviet time, were required to pass a qualification exam. According

⁹⁹⁰ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

⁹⁹¹ Valts Kalniņš, "D.3.3.3 Process-tracing case study report on Estonia," 2015, http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/d3.3.3-estonia_process-tracing-report-kalnins1.pdf (accessed on September 16, 2016).

to the Status of Judges Act, moreover, applicants had to be endowed with high moral character to be able to make good judges. All applicants were also required to have law degree qualifications.⁹⁹² During the Mart Laar government (1992-1995), the system started with new magistrates that mostly had little previous professional experience but an extensive academic one. Some were former lawyers who worked for state enterprises, mostly women.⁹⁹³ These were trained within a few months.⁹⁹⁴ By the end of 1994, in this context, the Estonian judiciary experienced a sixty-seven percent renewal, and the average age for judges was less than 40 years old.⁹⁹⁵

The Parliament appointed Rait Maruste as Chief Justice of the Supreme Court, a Law Assistant Professor. The key political criterion of the parliamentary majority for the approval of Supreme Court judges, in this sense, was justices' lack of involvement in political cases during the Soviet period. According to the Minister of Justice at the time, Kaido Kama (1992-1994), "We did not let for the positions of judges people who, as lawyers say, "sat" in political cases in the Soviet time."⁹⁹⁶ The Parliament refused to appoint three candidates to the Supreme Court.⁹⁹⁷ According to an interviewed judge, "For Supreme Court, the Chairman brought new people and the best from the old."⁹⁹⁸ Possible involvement in corruption, however, was not a major concern for the reappointment process.⁹⁹⁹

⁹⁹² Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁹³ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁹⁴ Aare Kasemets, "The Long Transition to Good Governance: the Case of Estonia Looking at the changes in the governance regime and anticorruption policy," *European Research Centre for Anti-Corruption and State-Building*, Working Paper No. 32, 2012.

⁹⁹⁵ Ekaterina Mishina, "Estonia – small country great achievements," Institute of Modern Russia, March 5, 2012.

⁹⁹⁶ Kama, Kaido (public official), interview cited in Kalniņš, "Estonia," 13.

⁹⁹⁷ Kalniņš, "Estonia," 13.

⁹⁹⁸ Anonymous (judge), interviewed by author, Tallinn, October 2016.

⁹⁹⁹ Kalniņš, "Estonia."

Besides the reappointment process, the size of the judiciary changed as well. The number of positions available for judges increased significantly as a result of the newly introduced court system. There was a total of 83 judges before the reform. In 1994, the Estonian President appointed 154 judges but not all positions have been filled, a number of vacancies still remained.¹⁰⁰⁰ Daimar Liiv, the chairman of the parliamentary Legal Committee at the time, described the exchange of the dominant position of the Soviet-era judges on new judges as follows:

“We brought in quite a big number of new people. Most of these newcomers were not top lawyers. Quite a big number of them were female judges who came from the former Soviet enterprises and had worked there as lawyers, personnel office women and so on. These new judges were mainly middle-aged, having no other career perspectives. They did not have very big private business career possibilities. Because of quite normal or, not low salary initially, also compared to their former positions, and the lifetime appointment, they were very motivated to stay in this system. [...] I suppose by the end of 1995 maybe a half of [former Soviet judges] stayed. The idea was that they were not establishing the culture for the judiciary. The culture was established by the Supreme Court.”¹⁰⁰¹

Hence, the newly established court system represented a clear rupture with the Soviet system to the extent that it was possible. It was also the period of the most radical judicial reforms. Along with the early transformations of the judiciary, Estonia also started reforming its police, an institution that actively cooperates with the judiciary. The law enforcement reforms took place in three stages: “reconstructing the police force, bringing the law enforcement agency system into compliance with EU requirements, and unifying all law enforcement agencies into a single organization.”¹⁰⁰² According to a senior public official, German police played a crucial role in building the Estonian police system.¹⁰⁰³

¹⁰⁰⁰ Kalniņš, “Estonia.”

¹⁰⁰¹ Liiv, Daimar (judge), interview cited in Kalniņš, “Estonia,” 14.

¹⁰⁰² Mishina, “Estonia – small country great achievements.”

¹⁰⁰³ Anonymous (policy-maker, public official), interviewed by author, Tallinn, October 2016.

The years just before EU accession brought another wave of reforms to strengthen the judicial framework. In 2002 the consolidation of the independence and administration of the judiciary took a key step in reducing the formal influence of the Ministry of Justice with the adoption of a new Law on Courts. One of the main provisions that strengthens the judiciary's independence is that the Act "eliminates political involvement in disciplining judges by transferring the authority to initiate proceedings against judges from the Ministry of Justice to the legal chancellor."¹⁰⁰⁴ As a result, it is now the Council for Judicial Training that bears full responsibility for the training of judges. In this sense, an entry point for potential executive interference has been eliminated.

Moreover, the Ministry of Justice has to co-administer the courts together with the Council for Administration of Courts, mainly composed of judges. The Ministry, however, retained the responsibility on budgetary issues.¹⁰⁰⁵ Other important reforms include the adoption of a new Code of Criminal Procedure in 2003 that contributed to a stronger judicial framework, as well as the introduction of specialization units within the prosecution and police systems. It also brings the transition to an adversarial system that is considered to be one of the most important reforms in the judicial system.¹⁰⁰⁶

In light of EU accession and full harmonization with the *acquis communautaire*, judges were trained in judicial activity throughout 2003-2006, particularly on the functioning of the European Court of Justice and implementation of EU legislation. The training component for judges has been kept and improved throughout years, and today Estonia can boast with having one of the most advanced frameworks for the training of

¹⁰⁰⁴ Freedom House, *Nations in Transit Report 2003*.

¹⁰⁰⁵ Freedom House, *Nations in Transit Report 2003*.

¹⁰⁰⁶ Anonymous (public official), interviewed by author, Tallinn, October 2016.

judges in Europe.¹⁰⁰⁷ Prosecutors, who also play a salient role in the judicial framework, did not receive similar trainings as these efforts were blocked by officials who “see prosecutors rather than judges as central to the control of the courts.”¹⁰⁰⁸ According to the same report, the EU training situation began to change for prosecutors only in 2005. Trainings, according to numerous interviewees, have improved the effectiveness and quality of investigation and prosecution altogether.

In 2008-2011 repeated attempts were made to initiate the reform of judicial autonomy. Yet, no final legislation was passed due to disagreements mostly among judges themselves.¹⁰⁰⁹ In December 2009, a special working group led by Chief Justice Mart Rask took the initiative to draft the necessary large-scale changes in the judiciary. The draft included, among other changes, the adoption of a hierarchical structure of judicial oversight, meant to build into the court system more adequate assessment of judges. It concentrated a lot of competences in the hands of the Chief Justice of the Supreme Court, and gave him significantly increased powers over the judges of the lower courts. According to an interviewee, this was the main reason why judges decided not to support the reform draft, that gave the legislature the opportunity to leave aside the overall reform package.¹⁰¹⁰

The judicial reform package also envisioned the creation of a separate, and fully independent agency to deal with the administration of lower courts. Due to both political and legal disputes regarding the setup of the autonomous administrative agency, the legislation was postponed and finally dropped after a new government came to power in

¹⁰⁰⁷ Anonymous (judge), interviewed by author, Tallinn, October 2016.

¹⁰⁰⁸ Freedom House, *Nations in Transit Report 2006*.

¹⁰⁰⁹ Judges, interviewed by author, Tallinn, October 2016.

¹⁰¹⁰ Judge, interviewed by author, Tallinn, October 2016.

2011. Hence, the major judicial reform package failed to be passed in Parliament. The separation of lower courts administration from the Ministry of Justice would have enhanced the independence of the judicial branch. One of the reasons for reform failure cited by an interviewee was the lack of preparedness and willingness of judges to undertake the court administration burden on themselves. Since most of the judges come from an academic background, dealing with issues other than legal matters is not appealing or seen as a necessity to enhance their independence.¹⁰¹¹ At the same time, however, it would have introduced a very hierarchical structure of judicial oversight among the courts, and provided expanded competences to the Chief Justice of the Supreme Court, an institutional arrangement that did not please many judges.

The next government focused on addressing minor issues meant to improve the effectiveness of the judiciary, such as the decrease in the high level of state fees for judicial procedures, and shortening of the length of judicial proceedings. The more critical reforms addressing the autonomy of the lower courts have not been a priority on the agenda since then.¹⁰¹² The current government does not envision any key judicial reforms in its coalition agreement.

In light of the above empirical analysis of judicial reforms, we conclude that Estonia passed its main reforms in the early 1990s and immediately before EU accession. The newly established court system represented a clear rupture with the Soviet system by re-appointing all judges and redesigning the court system. Enacted changes led to a decrease in the influence of executive over the judicial branch and the prosecution

¹⁰¹¹ Judge, interviewed by author, Tallinn, October 2016.

¹⁰¹² Freedom House, *Nations in Transit Report 2014*.

system. In this regard, the administration of courts was transferred under the co-shared responsibility of the Ministry and the Judicial Council. Reform of the court system went in parallel with the reform of police and prosecution. In this regard, specialized units dealing with corruption cases were introduced both in the police and prosecution. Finally, the failure of the 2010 reform package serves as evidence that enacted reforms represented a demand of the local context. Hence this process of tailoring reforms to the fabric of the judicial system consolidated its strength and capacity as a sustainable domestic check on power, which ensured an effective control of political corruption.

Explaining cases of high-level corruption

High-profile cases of political corruption are a rare occurrence in Estonia, but they are more frequently revealed in the last few years than in the past. According to an interviewed expert from TI Estonia,

“this does not mean they were not happening in the past as well but the reason why you hear about them now is because investigation has become much more professional – a big change definitely. Several years ago special anti-corruption prosecutors were appointed – before that there was no specialization of prosecutors. It was decided at the prosecutor’s office that they need specialized prosecutors on these cases. Specialization made investigation more effective.”¹⁰¹³

In this sense, the specialization of the prosecution system made the process of investigation of corrupt practices a less complex endeavor. There are two concerns however, that have been raised regarding the low frequency of high-profile prosecutions. First one was the limited period within which a criminal or civil action could be brought against an alleged offender. In this context, the statute of limitations for corruption

¹⁰¹³ Anonymous (expert, TI Estonia), interviewed by author, Tallinn, October 2016.

offences was only two years up to the moment a case was transmitted to court, fact that could hamper effective prosecution of corruption crimes. Second, the punishment that was applied to those condemned for corruption was lenient. This fact incriminates the courts for not contributing enough to make corruption a high-cost activity. An example in the GRECO Evaluation Report on Estonia states that in the 1995-1999 period, out of the 55 convictions for “offences in office” only five defendants were imprisoned.¹⁰¹⁴ Moreover, between 1995 and 2002 only three cases of corruption among judges have been reported. Moreover, all three were acquitted.¹⁰¹⁵

Starting with 2007, the independence of the courts and judges was also more frequently put to a test. Several high profile cases, involving amongst others a cousin of the former president, Arnold Meri, as well as a former judge accused of taking bribes in exchange for transfer of influence, Ardi Suvalov, were brought to court. In both cases, the judiciary has proven its consolidated independence. Moreover, in 2010, the Supreme Court assisted Estonia in reaching a breakthrough in its anti-corruption performance. It upheld a bribery conviction against Villu Reiljan, the former environment minister and leader of People’s Union party. According to Freedom House, “the Supreme Court ruling showed that even high-level political figures are not immune to prosecution.”¹⁰¹⁶ This indictment also helped Estonia improve its Freedom House corruption rating, as explicitly stated in the Freedom House 2011 *Nations in Transit* Report.

In 2012, however, Estonia’s anti-corruption rating slightly declined. The downgrading was related to the activity of the prosecutor’s office that was criticized for selectively monitoring sensitive political issues. Moreover, a major corruption scandal

¹⁰¹⁴ GRECO, *Evaluation Report on Estonia*, 24–25.

¹⁰¹⁵ Open Society Institute, *Monitoring the EU Accession Process*, 220.

¹⁰¹⁶ Freedom House, *Nations in Transit Report 2011*.

regarding the transfer of influence in Estonian politics involved the Minister of Justice at the time, who in 2009-2010 was the secretary-general of the Reform Party. The Prosecutor's Office however interrupted the investigation, due to apparent lack of evidence.¹⁰¹⁷ According to an interviewee,

“... sometimes there are discussions that it [prosecution system] is politicized. But once the nomination took place, then the work of prosecution is very independent. The nomination might be, but it is very difficult to say, since they are all professionally very well prepared. When you do have cases of political elites (referring to opposition) involved in corruption cases, then of course you do have complaints saying that they were politically motivated. But generally, coalition members have also been prosecuted, not only opposition members. The general feeling is that it is not politicized.”¹⁰¹⁸

In this sense, there are some who voice concerns related to the appointment process of the General Prosecutor. Yet generally, its activity is considered to be impartial and independent.

Currently there are two more high-profile cases of political corruption that are tottering the fabric of the Estonian society. In the first case, the management board of the state-owned Port of Tallinn was accused of taking bribes over the course of several years. In August 2015, Internal Security Service (ISS) arrested the CEO of the Port of Tallinn, Ain Kaljurand, and a port board member and longtime member of the Reform Party, Allan Kiil.¹⁰¹⁹ As of September 2016, the case was still undergoing investigation. The supervisory board, in this context, “stepped down in acknowledgement of their failure of financial oversight.”¹⁰²⁰ Also, a new board was appointed but this time, without politicians.

¹⁰¹⁷ Freedom House, *Nations in Transit Report 2013*.

¹⁰¹⁸ Anonymous, interviewed by author, Tallinn, October 2016.

¹⁰¹⁹ Estonian Public Broadcasting, “Authorities detain Port of Tallinn CEO on corruption allegations,” 2015, <http://news.err.ee/v/politics/cf7d4f70-5d2b-4716-b07c-8517adbf38cb/authorities-detain-port-of-tallinn-ceo-on-corruption-allegations> (accessed on 28 September 2016).

¹⁰²⁰ Freedom House, *Nations in Transit Report 2016*.

In the second case, the chairman of the Center Party, and opposition leader, Edgar Savisaar, was suspended from office as mayor of Tallinn at the request of the prosecutor's office, and accused of accepting property and monetary bribes during 2014-2015 in amount of hundreds of thousands of euros on behalf of the Center Party and himself.¹⁰²¹ In September 2015, ISS launched an investigation on allegations of bribery. Savisaar has denied the accusations.¹⁰²² According to Freedom House, "the process and outcomes of these cases will play a significant role in demonstrating the practical effects of anticorruption laws and other regulations that aim to enforce the country's democratic principles."¹⁰²³ Hence these few cases serve as evidence of how an independent judiciary and prosecution system are defining elements in upholding the work of anti-corruption institutions.

Conclusion

In light of this empirical background, this chapter finds evidence that supports the second hypothesis, and namely that states with strong and independent judiciaries are more likely to contain corruption after accession. To fully validate the hypothesis however, we need to compare the findings from the Polish and Slovak case studies, which are analyzed in the next chapters.

To conclude on the Estonian case, evidence shows that the independence of the judiciary in this state is steadily entrenched in the law and in its practice. Most salient

¹⁰²¹ Estonian Public Broadcasting, "Savisaar Named Suspect in Bribery Case," 2015, <http://news.err.ee/v/politics/bd2685cb-2efe-4d7c-ac33-c26c09f9cf3d/internal-security-services-detain-savisaar-suspect-him-of-repeatedly-taking-bribes> (accessed on 28 September 2016).

¹⁰²² Freedom House, *Nations in Transit Report 2016*.

¹⁰²³ Freedom House, *Nations in Transit Report 2016*.

reforms in this regard have been passed in the early 1990s and the EU pre-accession period and have been driven by domestic forces within an inclusive process of consultation of the different stakeholders. Also, Estonia's judicial arrangements reveal very few loopholes or "hidden opportunities"¹⁰²⁴ for undue influence on behalf of the executive. Two most important ones are the co-shared administration of the lower courts by the Ministry of Justice and the Judicial Council, as well as the management of the budgeting process for the lower courts solely by the Ministry. Yet, an effective co-shared administration is perceived a better mechanism than poor self-administration.

According to an interviewed senior public official, "If there is an independent body for the administration of courts but it does not function, and judges can be influenced by politicians in illegal ways, there is no point of it."¹⁰²⁵ Unlike in Poland and Slovakia, moreover, the executive seriously considers the opinion of the judiciary in both situations. Also, despite never witnessing a case of undue influence on behalf of the executive in Estonia, "structural safeguards need to be in place. They help maintain the integrity of judges because there are many opportunities to be a corrupt judge," according to an interviewee.¹⁰²⁶ Hence, we find no evidence of politicization either of judges or prosecutors.

Finally, this chapter finds empirical evidence of effective investigations and prosecutions of cases of corruption among the highest echelons of power after accession. The investigated cases correspond to the areas where corruption remained a salient issue for Estonia, and namely local public administration and state-owned companies. These are the only areas where there are still loopholes entrenched, but with the intervention of

¹⁰²⁴ Anonymous (public official), interviewed by author, Tallinn, October 2016.

¹⁰²⁵ Anonymous (public official), interviewed by author, Tallinn, October 2016.

¹⁰²⁶ Anonymous (judge), interviewed by author, Tallinn, October 2016.

an independent judiciary corrupt behavior is contained. Interviews reveal that this effective sanctioning of political corruption is due to independent judges and prosecutors.

12

Judicial Independence in Poland

Based on the empirical analysis of the Polish case, this chapter finds evidence that builds towards the support of the second hypothesis, and namely that states that have stronger and more independent judiciaries are more likely to better contain corruption after accession. In testing the second hypothesis, Poland represents a typical positive case that is used to identify the main aspects of the causal process between an independent judiciary and its stable control of corruption after accession. It is however a borderline case since it has experienced only partial judicial reform before accession. At the same time, it reflects a strong positive correlation between its rule of law and control of corruption indicators after accession.

Evidence shows that the independence of the judiciary in Poland is steadily entrenched in the Constitution. Structural safeguards to ensure its independence have been adopted in the 1980s and very early 1990s, which allowed the Polish judiciary to also shape the further developments of the democratic transition that followed. Yet, more reforms were expected to be implemented but did not materialize. Embedded weaknesses as a result hampered its potential to deal with cases of corruption more effectively in the 1990s. Poland's judicial arrangements reveal salient points of entry for undue influence on behalf of the executive. Among the most important ones are the financial dependence on the Ministry of Justice, the increased role of court presidents as representatives of the executive, and a heavily politicized prosecution system. Moreover, unlike in Estonia, the

Ministry does not consider the opinion of judges when it comes to court financial matters. Also, we do find evidence of politicization of prosecution, in particular.

Despite attempts at reforms after accession as well, the judiciary is still struggling to effectively contain political corruption. Moreover, there are very few cases of political corruption brought to court. Therefore there is very limited direct evidence of courts' manifestation of judicial independence in such cases and rigorous conclusions cannot be drawn. Conclusions are drawn from expert and practitioners opinions who have been interviewed as part of this research.

Introduction

The Polish judicial system has experienced salient reforms in the 1980s and early 1990s when the main safeguards of judicial independence were established. Yet, the judiciary was amongst the least reformed institutions in the 1990s. This is the period also when the courts were perceived to be corrupt.¹⁰²⁷ This perception has gradually changed as the judiciary “cleaned itself” from corrupt judges. The reform process, though not radical as in Estonia, has restarted during the first years after accession only. Today, the Polish judicial system still does not enjoy high trust on behalf of the Polish society. Yet, judges are considered to be independent in delivering impartial judgments. Also, the judiciary is ranked relatively high, 22nd out of 113th according to the 2016 Rule of Law Index.¹⁰²⁸ It is also globally ranked 28th/113 when it comes to the capacity of the judiciary to constrain government powers, a relatively high score though significantly

¹⁰²⁷ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰²⁸ 2016 Rule of Law Index, World Justice Project, <http://data.worldjusticeproject.org/>.

lower than Estonia's. Concomitantly, Poland's rule of law indicator for 1996-2015 is highly correlated with its control of corruption, according to the World Governance Indicators, which is a first sign that a lot of the developments in the rule of law might explain developments in control of corruption.¹⁰²⁹

Empirical analysis of the institutional framework

Legal framework and organization. The reform of the socialist-type judiciary, when the courts were still part of the executive, started for Poland before 1989 with the creation of the Supreme Administrative Court in 1980, and the passage of a new law on the Supreme Court in 1984. Laws on the establishment of the constitutional tribunal and the state tribunal followed shortly. The former was created to adjudicate the constitutionality of law and regulations while the latter to adjudicate cases involving high-level public officials accused of infringing the law as a response to instances of high official corruption in 1980. The setup of these institutions had a crucial influence on the changes that followed later at the end of the 1980s.¹⁰³⁰ Moreover, the reform of the judiciary was among the main topics discussed during the Round Table Talks, and in particular the need to ensure its independence as a separate branch of power. In this regard, one of the most salient reforms in 1989 was the amendment to the Constitution of 1952 that guaranteed the independence of the judiciary from the legislature and the

¹⁰²⁹ World Bank, *World Governance Indicators*.

¹⁰³⁰ Adam Bodnar, "The Judiciary in Poland after 20 years of transformation" (2010).

executive. Formal safeguards were later also enshrined in the 1997 Polish Constitution.¹⁰³¹

The court system, according to Article 175 of the Polish Constitution, consists of the Supreme Court, common courts, administrative courts, and the military courts. Common courts have a three-tier structure (district courts, regional courts and appeal courts). The constitutional tribunal and the state tribunal are responsible for interpreting and enforcing the rules enshrined in the Constitution, and comparatively, enjoy high levels of societal trust.¹⁰³² The legal architecture underpinning the court system, and other law enforcement institutions were considered indisputably democratic.¹⁰³³ In 2002, paradoxically, when Poland was registering the most corrupt country score among the 2004 candidate countries, and it did not enjoy a good reputation for its rule of law either¹⁰³⁴, the existing constitutional checks and balances it had established were credible.¹⁰³⁵

Administration of the court system. There is no independent judicial body responsible for the administration of courts at the national level. In this context, the competences of the National Council of the Judiciary (NCJ) are limited to protecting the independence of judges as individuals rather as a separate branch of government. This is considered an impediment to ensuring the full independence of the branch, as the analysis shows later. The administrative supervision of common courts, in this regard, falls under the responsibility and competence of the Ministry of Justice.¹⁰³⁶ This includes “efficient

¹⁰³¹ Polish Constitution, Article 10, 173, and 178.

¹⁰³² Freedom House, *Nations in Transit Report 2012*.

¹⁰³³ Freedom House, *Nations in Transit Report 2014*.

¹⁰³⁴ Data from World Bank, *World Governance Indicators*.

¹⁰³⁵ Freedom House, *Nations in Transit Report 2003*.

¹⁰³⁶ Act on Ordinary Courts, Art. 10 cited in Open Society Institute, *Judicial Independence*.

case handling and proper enforcement of court rulings.”¹⁰³⁷ According to international assessment reports, the Ministry’s administrative competence over lower courts, its supervisory powers, as well as the right to begin investigations or reverse administrative court decisions open many opportunities for indirect influence of judges.¹⁰³⁸ It also undermines the credibility of the judiciary as an independent branch of government.

In this regard, interviewed judges have mentioned the involvement of the executive in the administration process of courts as being highly problematic. One particular mechanism that has been mentioned is the budgeting process. Especially with the newly introduced reforms by the current governing party PiS, the competences of the court president have been increased. In this sense, “the director of the court, as an employee of Ministry of Justice, who can be chosen even without special competition, will decide about the budget of court, staff employees and shopping orders.”¹⁰³⁹ As a reaction to the newly introduced changes, judges initiated a new project in connection with the budget independence and administrative supervision, which envisions shifting these competences from the executive to the president of the Supreme Court, in the hope that this will make the judiciary more independent.¹⁰⁴⁰

Yet, recommendations made by these judicial bodies to the law drafting process are mostly not considered. In majority of cases they are asked for their opinion on draft bills, because it is part of the procedure, and not because their opinion is in fact to be considered. In order for judges’ opinion to be seriously taken into account, it is necessary

¹⁰³⁷ Open Society Institute, *Judicial Independence*, 327.

¹⁰³⁸ Open Society Institute, *Judicial Independence*, 327.

¹⁰³⁹ Email conversation with Association of Judges (anonymous), October 2016.

¹⁰⁴⁰ Email conversation with Association of Judges (anonymous), October 2016.

that they work in “good cooperation with the Ministry of Justice.”¹⁰⁴¹ Hence, when opinions on bills diverge between judges and the executive, these are not considered.

National Council of the Judiciary. NCJ is theoretically the main representative of the judicial branch, and its establishment was decided during the Round Table Talks in 1989.¹⁰⁴² The Constitution defines the Council as an institution that protects the independence of judges and courts.¹⁰⁴³ The NCJ’s competences however focus mainly on the issues surrounding the judges themselves rather than on the role and status of the judiciary as a separate branch of government.¹⁰⁴⁴ Hence,

“In 1989, when the Council was created, there was discussion in Parliament about whether or not it constituted a representative body of judges. The prevailing view held that the Council had a special character, but that it was not strictly speaking an organ of judicial authority and that it did not seem to qualify as an organ of judicial self-government.”¹⁰⁴⁵

The 24-member collegial council of the NCJ is mainly composed of judges who are appointed by the President for a four-year term but also of members of political bodies (Sejm, Senate, President, Ministry of Justice).¹⁰⁴⁶ The council members can be subsequently re-appointed. Among the main functions of the NCJ is presenting to the President motions for appointment of judges, and establishing professional standards.¹⁰⁴⁷ NCJ representatives can also participate in the meetings of parliamentary committees at the invitation of the chairman of the committee. Despite being required to ask for NCJ’s opinions on any bill that concerns the judiciary, the Parliament is not legally bound in any manner to these opinions. Hence, according to the NCJ, despite being consulted very

¹⁰⁴¹ Email conversation with Association of Judges (anonymous) , October 2016.

¹⁰⁴² Bodnar, “The Judiciary in Poland after 20 years of transformation.”

¹⁰⁴³ Polish Constitution, Art. 186(1).

¹⁰⁴⁴ Law on the National Council of the Judiciary, Art. 2, cited in Open Society Institute, *Judicial Independence*.

¹⁰⁴⁵ Open Society Institute, *Judicial Independence*, 322.

¹⁰⁴⁶ Polish Constitution, Art. 187.

¹⁰⁴⁷ Act of 12 May 2011 on the National Council of the Judiciary.

often, the NCJ's opinion is rarely taken into account.¹⁰⁴⁸

In this regard, there are several issues that undermine the authority of the NCJ that are acknowledged by judges, civil society, and politicians. On the one hand, during the Extraordinary Congress of the Polish Judges held in September 2016, the NCJ stated that it is “aware that the body needs reforms, and in particular it is necessary to change the rules of selecting its members into fully democratic ones. The current proposals to amend the Act, however, lead to the weakening of the position of the council and to the weakening of the judicial power.”¹⁰⁴⁹ Watchdog organizations also recognize that the selection process of judges is not transparent enough. Their proposal is to include representatives of the civil society as well in the selection process.¹⁰⁵⁰ Judges also think its authority is undermined by the fact that NCJ is a body composed of not solely judges but also politicians, a much more important weakness than the fact that it has limited competences stipulated by law.¹⁰⁵¹ In this context, legal experts consider that the authority of the NCJ as a representative of the judiciary is very low, if at all existent:

“Generally they [NCJ] are ignored. They don't have power. Zero influence. Even judges themselves think this way. It is an important institution, but it does not mean anything to the government. It lost its role because of the way it is treated by the government. It is important for the appointment of judges, but this June [2016] the president refused the appointment of 10 judges nominated by the NCJ. The president signature is a formality, and no one thought it is possible to ignore it. To be honest, the former President Komorowski did exactly the same.”¹⁰⁵²

In this context, we notice that the NCJ is generally disregarded as a judicial self-governing body by the political elites, regardless of who is in power. The current ruling elite, in this sense, considers the NCJ to lack impartiality in its opinions to be considered

¹⁰⁴⁸ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹⁰⁴⁹ Resolution No. 2 of the Extraordinary Congress of the Polish Judges, 2016.

¹⁰⁵⁰ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁵¹ Email conversation with Association of Judges (anonymous), October 2016; Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁵² Anonymous (expert), interviewed by author, Warsaw, September 2016.

during the drafting of legislation, and therefore has also proposed changes to the selection procedure of judges.¹⁰⁵³

Terms of judicial employment. In accordance with the Polish Constitution, the President of the Republic, on the motion of the NCJ, appoints judges of common courts for an indefinite term, which usually ends at retirement.¹⁰⁵⁴ They cannot be dismissed or arbitrarily removed from office.¹⁰⁵⁵ Their functional independence is protected by certain restrictions placed on outside activity, such as joining political parties, trade unions, or carrying out public functions that would question their independence. Moreover, a judge cannot be permanently transferred to another post without her consent.¹⁰⁵⁶ The lower chamber of Parliament (Sejm) elects the fifteen Constitutional Tribunal justices for a single nine-year term.

Also the Sejm appoints the twenty-seven members of the State Tribunal, from amongst those who are not Deputies or Senators, for a term that coincides with that of the Sejm. The chairperson of the State Tribunal is also the president of the Supreme Court.¹⁰⁵⁷ The Tribunal however, is not very active in terms of the number of cases heard. From its establishment in 1929, the State Tribunal examined a total of nine cases only. The last one, the case of Emil Wąsacz, the Minister of State Treasury at the time, started in 2007, and is still under review. This is the only case examined in the last ten years.¹⁰⁵⁸

When it comes to the independence of judges, it seems that the terms of recruitment, appointment and promotion represent a salient concern.¹⁰⁵⁹ The legislative

¹⁰⁵³ Anonymous (policy-maker), interviewed by author, Warsaw, September 2016.

¹⁰⁵⁴ Polish Constitution, Art. 179.

¹⁰⁵⁵ Polish Constitution, Art. 180.

¹⁰⁵⁶ 2011 Law on Common Courts Organization.

¹⁰⁵⁷ <http://www.sejm.gov.pl/english/prace/okno5.htm>

¹⁰⁵⁸ Email conversation with judge, November 1, 2016.

¹⁰⁵⁹ Anonymous (judge), interviewed by author, Warsaw, September 2016.

framework is considered adequate¹⁰⁶⁰, but in practice, there is a lot of undue influence on judges on behalf of the Ministry of Justice that stems from existing loopholes in the legislation. According to the 2007 Law on Court Organization, the Minister of Justice can “reassign judges to different courts for six months, and to temporarily nominate a chief judge without soliciting the opinion of other judges.”¹⁰⁶¹ The same law makes it mandatory for the NCJ “to lustrate the courts, to help unify sentencing, and to prohibit all chief justices from being council members.”¹⁰⁶² The Constitutional Court has overruled some of these provisions.

Moreover, judges can and are, in fact, frequently working within the Ministry of Justice while in parallel adjudicating cases. This double position has the potential of jeopardizing their independence.¹⁰⁶³ As of October 2016, there were 151 judges working for the Ministry of Justice. During their employment with the Ministry however, they do not adjudicate cases, which is seen as a good solution to avoiding conflicts of interest. Yet, according to interviewed judges, the judges’ place is in the courtroom and not in the administration of the Ministry of Justice.¹⁰⁶⁴ With judges’ consent, the Minister may also assign them to conduct administrative duties in the Supreme Court for a specified or unspecified term.¹⁰⁶⁵

The Minister of Justice also appoints and recalls district, regional, and appellate court presidents once the general assembly of judges of the relevant court have given their opinion. Court presidents have a term of four years, and can be reappointed for a

¹⁰⁶⁰ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹⁰⁶¹ Freedom House, *Nations in Transit Report 2008*.

¹⁰⁶² Freedom House, *Nations in Transit Report 2008*.

¹⁰⁶³ Open Society Institute, *Judicial Independence*, 310, 323.

¹⁰⁶⁴ Email conversation with judge, November 1, 2016.

¹⁰⁶⁵ Act on Ordinary Courts, Art. 63. cited in Open Society Institute, *Judicial Independence*.

second term at the initiation of the Ministry of Justice.¹⁰⁶⁶ It is important to highlight that local policy-makers have no say on the nomination or recall of court presidents. Hence, even though decisions are co-shared with the judiciary, the Ministry's right to initiate a second-term appointment grants it undue influence over court presidents interested to extend their term.¹⁰⁶⁷

In June 2016, the current Polish President, Andrzej Duda, refused to appoint ten common courts judges that were nominated by the NCJ. According to the NCJ, the President sees this process as his prerogative, but the NCJ disagrees. The Constitution does not stipulate whether the President has the right to refuse judges' nomination, but according to NCJ, the worrying aspect of the refusal was that it was done without providing an explanation for the refusal. This fact makes the society question the independence of the judiciary altogether.¹⁰⁶⁸

A salient issue that influences judges' independence and has been a constant problem is their remuneration. Unlike their Estonian counterparts, Polish judges are underpaid and do not enjoy satisfactory administrative support. According to Freedom House, these along with the Latvian judges, are the worst paid in the entire EU despite the fact that adequate remuneration was enshrined in the Constitution as a safeguard of judicial independence.¹⁰⁶⁹ According to an interviewed expert on judicial proceedings, the allocation of resources is not perfect and the working conditions are sometimes a problem:

“In terms of the number of judges per capita, and in terms of the percentage of our GDP, we are

¹⁰⁶⁶ Act on Ordinary Courts, Art. 29(1), 30, and 30(1), cited in Open Society Institute, *Judicial Independence*.

¹⁰⁶⁷ Open Society Institute, *Judicial Independence*, 338.

¹⁰⁶⁸ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹⁰⁶⁹ Freedom House, *Nations in Transit Report 2011*.

among the leaders in the EU countries. We are spending quite a lot on courts and we employ 10,000 judges. This is a lot. And why this is inefficient, judges are burdened with many administrative duties that non-judges could easily do. People with much lower education. But we do not have enough assistants, enough court clerks, but we have lots of judges. So there is a big disproportion.”¹⁰⁷⁰

Because there are too many judges per capita, the finances spent on courts altogether are not enough. Moreover, Polish judges have to rely on other branches that control budgeting decisions, an aspect of the legislation that may be used for undue influence over judges.

Because of judicial overburden, a mechanism of undue influence used in practice by the Ministry of Justice is public denigration of judicial decisions. Oftentimes the Ministry criticizes the courts about their excessive delays in delivering judgments as well as the content of their decisions. This happens especially in connection to decisions delivered on LGBT cases or ones related to family law. As a result, the public’s opinion about the courts is undermined, and impartiality constantly put under question.¹⁰⁷¹

Financial Autonomy. One serious *area for concern* is courts’ budgeting process, as briefly aforementioned. The state budget contains no special chapter for the judiciary. Allocation of funds for the judicial system goes through the budget of the Ministry of Justice, which includes budget items for various functions such as the judiciary, the prosecution, the prison system. It is only the Supreme Court, together with the Supreme Administrative Court, and Constitutional Tribunal that have independent budgets.¹⁰⁷² Starting 2006, the NCJ’s operating expenses are also covered directly from the state budget. Despite perceived as an overall positive reform, the NCJ still does not have its

¹⁰⁷⁰ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁷¹ Email conversation with Association of Judges (anonymous), October 2016.

¹⁰⁷² Open Society Institute, *Judicial Independence*, 330.

own premises.¹⁰⁷³

Moreover, the Ministry of Justice prepares the annual budget based on the “evaluation of the previous year’s performance” while taking into account “the estimated growth in caseload in courts connected to increasing the number of full-time judge positions and the requirements for new investments.”¹⁰⁷⁴ In this sense, it is the Ministry who prepares the budget, and decides on how to distribute budgetary resources based on court presidents’ submitted applications that outline their financial needs. According to an interviewed judge, severe budget cuts are currently under way for the Constitutional Tribunal, the Ombudsman, and the NCJ.¹⁰⁷⁵ This vertical accountability to the Ministry undermines significantly the independence of the judiciary and has been under parliamentary scrutiny for numerous times as a potential area for reform.

Public Prosecutor’s Office. In the case of Poland, until the establishment of CBA, the police and the Prosecutor’s Office were the main two institutions pursuing corruption cases. The Prosecutor’s Office was organized hierarchically under the Minister of Justice who held at the same time the function of Prosecutor-General until 2009.¹⁰⁷⁶ Moreover, since it was the ruling party that appointed the Prosecutor-General, its independence to pursue cases of grand corruption was highly questionable. According to NIK, at least until EU accession, prosecution offices lacked specialized capacity to pursue complex cases of corruption, and “sometimes operate[d] to protect the politically powerful.”¹⁰⁷⁷

According to an interviewed senior expert, prosecution today is the weakest link in the anti-corruption chain of law enforcement agencies. This has been known for years,

¹⁰⁷³ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹⁰⁷⁴ Open Society Institute, *Judicial Independence*, 330.

¹⁰⁷⁵ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹⁰⁷⁶ 1985 Act on Procuracy cited in Open Society Institute, *Monitoring the EU Accession Process*.

¹⁰⁷⁷ Open Society Institute, *Monitoring the EU Accession Process*, 413.

yet never genuinely addressed via effective reforms.¹⁰⁷⁸ One of the reasons stated is the nature of the work that needs to be conducted, the unpreparedness and lack of adequate training of prosecutors. Cases of corruption, in this sense, are generally difficult to be investigated, time consuming, and they cannot bolster prosecution statistics. Currently prosecution is in deep crisis, and highly politicized as “every government wants to have them as a tool.”¹⁰⁷⁹ In this sense,

“If you look into the criminal statistics then you have very big numbers of registrations of cases of corruption, and there it drops drastically at the level of the prosecutor’s office, and in the end you have more or less ten thousand registrations of corruption crimes every year in Poland. At the prosecutors level you have half of it, and in the end, you have less than 1000 convictions. And part of it is a problem at the court level but for me it is obvious that the problem is at the prosecutor’s level.”¹⁰⁸⁰

When the communist-style Office of the Chief Prosecutor was abolished in 1989, it was decided that the Minister of Justice would have the position and competences of also the Prosecutor General. The local level prosecutors were also taken away from the jurisdiction of the police, and placed under the coordination of the Minister of Justice.¹⁰⁸¹ Yet, most of the prosecutors remained the same as during the communist period, therefore it is considered that they “seriously inhibited the new legal system in dealing with the wave of crime that accompanied the transition to a market economy.”¹⁰⁸² Moreover, the prosecution of former senior communist officials that translated into more scandalous trials, generally took years.¹⁰⁸³

Until March 2010, prosecutors were hence an integral part of the executive branch, and under the firm control of the government as the Minister of Justice was also

¹⁰⁷⁸ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁷⁹ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁸⁰ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁸¹ <http://countrystudies.us/poland/79.htm>

¹⁰⁸² <http://countrystudies.us/poland/79.htm>

¹⁰⁸³ Freedom House, *Nations in Transit Report* 2003.

serving as Prosecutor General. Since the Minister of Justice is politically responsible to the *Sejm*, this institutional structure had as a goal to ensure parliamentary oversight of state prosecutors. This practice however, inherited from the communist period, undercut the autonomy of state prosecutors for decades and had been brought numerous times in the attention of the Parliament as a critical issue that needed to be addressed. Moreover, prosecutors did not have terms of office and they could be promoted or removed at any time. As an example, Freedom House states that “[i]n the first 10 months of 2007, the minister of justice changed 10 out of 11 appeals prosecutors and half of the regional ones.”¹⁰⁸⁴ Moreover, despite being fairly independent in their work from the executive, according to an interviewed expert, they are still quite dependent on their colleagues from higher instances to get a promotion.¹⁰⁸⁵

Following a turbulent adoption of an amendment to the Law on State Procurators, the positions of Minister of Justice and Prosecutor General have been finally split in October 2009 for a period of six years. Through a national merit-based competition organized by NCJ, a new prosecutor was chosen at the beginning of 2010. The Prosecutor General was appointed for a six-year term, and could be removed only when specified by law (resignation, incapacitation, or impeachment). Moreover, according to the amendment, once Prosecutor’s term expired, “the incumbent must retire from the legal profession.”¹⁰⁸⁶ Finally, the prosecutors who were working in regional offices but under the supervision of the Prosecutor General/Minister of Justice were moved back to the regional prosecutors’ offices.¹⁰⁸⁷

¹⁰⁸⁴ Freedom House, *Nations in Transit Report 2008*.

¹⁰⁸⁵ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁸⁶ Freedom House, *Nations in Transit Report 2011*.

¹⁰⁸⁷ Freedom House, *Nations in Transit Report 2008*.

Even though the reform was considered to be a breakthrough for the judiciary in Poland, and “a good step to make prosecutors independent of political influences”¹⁰⁸⁸, the prosecutorial offices along with the courts are even until today understaffed and underpaid, issues that expose them to further pressures.¹⁰⁸⁹ Moreover, these are overworked, which immanently leads to further “delays and hasty decision-making at all stages of the judicial process.”¹⁰⁹⁰ According to an expert opinion, the split of the two positions though institution-wise an important reform, did not have the expected effect in practice because the reform process was not finished. Prosecution, in this sense, became “too independent” at the expense of the role of the General Prosecutor: “Particular prosecutors were also quite independent from the Prosecutor General. There was nobody to control them.”¹⁰⁹¹ Hence, the Prosecutor General’s position was very weak relative to that of other prosecutors who “simply kept their own kingdoms and influences and relations to the political partners.”¹⁰⁹²

Moreover, the media portrayed this lack of accountability as excessive independence on behalf of prosecutors. According to an expert, there was no political interference in the activity of the prosecution during 2010-2015, but the reform could have been better designed. The Prosecutor General, a former judge at Krakow Court of Appeal dealing with criminal cases, did not manage to change the public perception about the politicization of the prosecution system in this short time span of five years.¹⁰⁹³ This is also considered the reason for the subsequent merge of the two positions once again in

¹⁰⁸⁸ Email conversation with Association of Judges (anonymous) , October 2016.

¹⁰⁸⁹ Freedom House, *Nations in Transit Report 2012*.

¹⁰⁹⁰ Freedom House, *Nations in Transit Report 2013*.

¹⁰⁹¹ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹² Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹³ Anonymous (judge), interviewed by author, Warsaw, September 2016.

2015 after a change in governments.¹⁰⁹⁴

Following the 2015 reform, the Prosecutor's Office is hence again directly politically dependent on the government. The difference from the previous model is that the Prosecutor General has been granted significantly increased powers and competences, and has full control of the staff in prosecutors' offices. He can take particular decisions in any investigation. If prosecutors do not want to follow his instructions, he can remove them from cases. He can also get involved in any single investigation and this can be easily manipulated when necessary, according to an expert's opinion.¹⁰⁹⁵ According to an interviewed judge,

"There are no sufficient reasons to justify the re-connection of such functions and making the public prosecution subordinate to the Minister of Justice, with simultaneous equipping the Minister with a range of instruments of supervisory nature that may adversely affect the independence of public prosecutors conducting preparatory proceedings."¹⁰⁹⁶

This reinstated concentration of power in the hands of the executive debilitated the independence of the prosecution, especially important in salient cases of high-profile political corruption.

The role of prosecutors is also particularly important when tackling local level corruption, according to an expert opinion. There is a general lack of interest on behalf of local and regional prosecutors offices, as well as local police in dealing with cases of corruption, especially among public administration officials: "As in many countries they are very connected, and it is very often difficult to proceed with cases of corruption at

¹⁰⁹⁴ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹⁵ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹⁶ National Council of the Judiciary, Opinion on the Parliamentary draft of the Act on the Provisions introducing the Public Prosecution Law and the parliamentary draft of the Public Prosecution Law with a self-amendment to the parliamentary draft of the Public Prosecution Law, 13 January 2016.

local level.”¹⁰⁹⁷ Evidence shows in this regard that the poorly reformed prosecution system is in the Polish case a serious impediment in tackling cases of corruption. At the same time, independence without inbuilt accountability mechanisms may also be harmful to the process, as the incomplete 2009-2015 reform has proven.

Specialized units. Poland does not have specialized units within law enforcement institutions, or specialized courts to deal solely with cases of corruption. Yet the lack of expertise of prosecutors, and police units is oftentimes mentioned as a cause for the lack of effectiveness of investigations in cases of corruption. According to legal experts, the police, for instance, have an important amount of cases of corruption on their desks, but they do not have the necessary expertise to gather sufficient evidence to push a case forward.¹⁰⁹⁸ There is no anti-corruption specialization within the prosecution system in Poland. Yet, serious corruption offences are usually handled by the specialized units within the district and appellate prosecutors offices, such as the Organized Crime Bureau of the General Prosecutor’s Office, which were created in the early 1990s.

The Central Bureau for Anti-Corruption (CBA) is the specialized body on anti-corruption in Poland, set up in 2006. It is subordinated, however, to the executive, and it does not have enforcement competences. Moreover, experts agree that despite the focus being on the CBA, the main powers of investigation and prosecution are in the hands of the Prosecutor’s Office.¹⁰⁹⁹ Moreover, as discussed earlier, due to the negative experiences of the first five years of its activity, CBA is often seen as a tool of the ruling party in dealing with political opposition.

When asked whether Poland needs specialized courts to deal solely with

¹⁰⁹⁷ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹⁸ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹⁰⁹⁹ Anonymous (expert), interviewed by author, Warsaw, September 2016.

corruption cases, local experts were in agreement that such a necessity does not exist. Most referred to the need for specialization among prosecutors and police. Specialization of judges on cases of corruption was seen also as having the potential to increase effectiveness of adjudications.¹¹⁰⁰

Empirical analysis of main judicial reforms

While many institutions underwent serious reform in the transition period, this was not the case for the judiciary.¹¹⁰¹ According to Garlicki and Brzeziński, “in 1989 there was no radical or revolutionary move with respect to judiciary. Since 1989 the judiciary has remained, both structurally and politically, the least transformed branch of government.”¹¹⁰² The judiciary also, “maintained considerable continuity in personnel during the transition to democracy.”¹¹⁰³ Moreover, it was one of the areas prone to corruption in the 1990s. Courts were considered among the most corrupt institutions, in this regard. Assessment reports cite poor court organization, difficult procedures, long delays and poor disciplinary mechanisms among the main weaknesses that made the judiciary vulnerable to corrupt practices. In this sense, the judiciary represented an area during the pre-accession period that the European Commission pressed for immediate reform.¹¹⁰⁴

As World Governance Indicators illustrate, both rule of law and control of corruption indices experience a downfall towards accession. According to the Polish anti-

¹¹⁰⁰ Anonymous (experts), interviewed by author, Warsaw, September 2016.

¹¹⁰¹ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹⁰² Lech Garlicki and Mark Brzeziński, “Polish Constitutional Law,” in *Legal Reform in Post-Communist Europe. The View from Within*, eds. Stanisław Frankowski and Paul B. Stephan III (London, 1995), 44.

¹¹⁰³ Freedom House, *Nations in Transit Report 2014*.

¹¹⁰⁴ Open Society Institute, *Monitoring the EU Accession Process*.

corruption expert community, this negative trend was due to the extremely well-mediatized process of the most serious corruption scandal in Poland, the Rywingate affair that occurred in 2002¹¹⁰⁵, that also drew the attention of Polish society that political corruption is a problem that affects the functioning of state institutions and needs to be addressed accordingly. The downfall hence is not reflective of an actual backslide of the two indices just before accession.

After accession bold reforms in the judiciary have not been introduced either. According to Bodnar, Poland's official Ombudsman, the cause of this lack of bold transformations is,

“the persistent lack of a general strategy or vision as regards the development of the judiciary. In the last 20 years Poland has had more than 20 Ministers of Justice. Some of them concentrated only on the most expedient reforms, some used the office of the Minister of Justice solely for political purposes (e.g. by promoting a harsh criminal policy), some others did not have sufficient time in the office to implement their plans. Therefore, reforms that were implemented were quite often fragmented, dependent on current financing (especially out of EU funds) and they were not part of a large, comprehensive, long-term strategy for the judiciary.”¹¹⁰⁶

In this regard, even after accession the judicial system overall does not enjoy a good reputation among Poles. Immediately after accession it was ranked the second most corrupt sector after healthcare.¹¹⁰⁷ The conditions that challenged its daily functioning were excessive delays in court proceedings, cases of corruption in the judiciary itself, and politicization of the general prosecutor's position. In 2005 there were still over six thousand court cases lasting for more than five years.¹¹⁰⁸ In 2006, Freedom House mentions that the judiciary continued to be the weakest area of Polish governance. New cases of corruption involving judges and prosecutors, the leniency of the court system,

¹¹⁰⁵ Marcin Hadaj, “Poland: Paper Chase,” 2003, <http://www.worldpress.org/Europe/1098.cfm>

¹¹⁰⁶ Bodnar, “The Judiciary in Poland after 20 years of transformation.”

¹¹⁰⁷ Freedom House, *Nations in Transit Report 2006*.

¹¹⁰⁸ Freedom House, *Nations in Transit Report 2006*.

the long duration of court proceedings, the numerous cases lost in the European Court of Human Rights, made Poland's rule of law but also corruption indicators simultaneously decline.

Some reforms hence started being introduced in the judiciary only in the mid-2000s. 24-hour courts for petty crimes, increased court computerization, and audio/video recording of court proceedings, all were meant to unclog the system.¹¹⁰⁹ The 24-hour courts proved less effective than expected, and were later transformed into 72-hour courts with the obligatory arrest of the offender.¹¹¹⁰ The computerization of Polish courts proved to be very effective: protocols started being digitized, time to access criminal records was reduced from two days to two hours, real estate books were made available online, and courts started having information pages on the Internet. Moreover, over 800 courts were using audio recording equipment, and witness examinations could be conducted via videoconferences when necessary.¹¹¹¹ In 2009, a less stringent criminal law with new changes to the penal code, and more effective courts were immediately reflected in Poland's ranking for rule of law.¹¹¹² Moreover, the introduction of e-courts in 2010 where minor claims can be filed and judgments are delivered via Internet proved to be very successful. In one year, according to Freedom House, the system "had accepted and resolved over one million cases."¹¹¹³

One of the most important reforms adopted was the formal division of the positions of Prosecutor General and the Minister of Justice for a five-year period, between 2010-2015. This separation of functions and powers promised a lot of potential

¹¹⁰⁹ Freedom House, *Nations in Transit Report 2008*.

¹¹¹⁰ Freedom House, *Nations in Transit Report 2009*.

¹¹¹¹ Freedom House, *Nations in Transit Report 2009*.

¹¹¹² Freedom House, *Nations in Transit Report 2009*.

¹¹¹³ Freedom House, *Nations in Transit Report 2012*.

for improvement in prosecutors' independence¹¹¹⁴ but its practical effectiveness failed to materialize. Moreover, in 2015 the current government not only reversed the reform, as mentioned earlier, but also invested more powers in the Prosecutor General's position that is carried out again by the Minister of Justice. In this context, the prosecution system, though planned to be reformed under the GRECO recommendations guidance, has been subordinated to the executive, fact that incapacitated one of the main investigatory bodies at the national level as a check on the executive.

Moreover, as of October 2016, the current ruling Law and Justice (PiS) party plans a revolutionary reform in the realm of the judiciary. It has already passed a few controversial laws that brought the Constitutional Tribunal's activity to a standstill. It also intends to liquidate all district courts (there are more than 300 courts) that would trigger the obligation to reappoint judges, according to the Constitution. Since PiS advocates for already a decade for the need to lustrate judges, this might be the way to do it. These developments reflect a clear threat to the independence of the judiciary, as experts have concluded.¹¹¹⁵ The main problem, according to the expert community, is that these reforms are planned without any public debate:

“All you hear are rumors. The NCJ is not involved, the judges are not involved, apart of these employed in the Ministry of Justice. ... The issue is that the judiciary is not treated as a partner by the legislative and the executive powers at all. There is no dialogue. It is treated as an enemy under constant attack.”¹¹¹⁶

These reforms led the judges to organize an Extraordinary Congress of Polish judges that took place in Warsaw on September 3rd, 2016. It brought together nearly 1000 judges, which constitutes nearly ten percent of all judges. According to one of the final

¹¹¹⁴ Freedom House, *Nations in Transit Report 2014*.

¹¹¹⁵ OSCE meeting notes. Warsaw, September 2016.

¹¹¹⁶ OSCE meeting notes. Bojarski. Warsaw, September 2016.

resolutions of the Congress, judges request that the President of the Supreme Court be entrusted with the administrative oversight of common and military courts, judges should not be delegated to work for the Ministry of Justice, and national body of judiciary self-government representing judges be created. Another important request is to limit the political influence on the selection and appointment of judges, including also that of the judges of the Constitutional Tribunal. These recommendations all address the need to protect and strengthen the separation of powers and the restoration of the constitutional checks and balances.¹¹¹⁷

Mostly the same problems in the judiciary continue to persevere up until today. Moreover, the branch is exposed to very serious attacks on behalf of the government since the current PiS government took office.¹¹¹⁸ These pressures on behalf of Law and Justice (PiS) ruling party are not new, however. During 2007, an undeclared war between the same ruling party then, PiS, and the Constitutional Court has started. Judges continuously attempted to overturn numerous laws passed by the Parliament, while PiS regularly criticized the Court as “a body of political opposition” menacing to weaken its role.¹¹¹⁹ By autumn 2007, over twenty decisions of the Constitutional Court were not being enforced.¹¹²⁰

Moreover, in 2010, the vote of four new Constitutional Tribunal justices was split along party lines. According to Freedom House, “this show of partisanship by the ruling parties constituted a serious setback in efforts to promote judicial independence in

¹¹¹⁷ Resolution No. 1 of the Extraordinary Congress of the Polish Judges, September 3, 2016.

¹¹¹⁸ OSCE Conference in Warsaw, Rule of Law in Poland session, September 2016.

¹¹¹⁹ Freedom House, *Nations in Transit Report 2008*.

¹¹²⁰ Freedom House, *Nations in Transit Report 2008*.

Poland.”¹¹²¹ Moreover, in 2009, the Ombudsman for Civil Rights drew again attention in his annual report that the problem of court delays still persisted, and some cases were extended even for decades.¹¹²² According to Court Watch Poland, an NGO monitoring and assessing court performance, lengthy court proceedings are a serious problem also today. The significant increase in the influx of cases, considered one of the main problems in the judiciary today, is directly connected to the court delays. It is also what triggers the public’s perception that courts are corrupt, which according to his experience, is not the case. According to an interviewed expert,

“We’ve seen an explosion of case loads. Several years ago it was about ten million cases per year, last year we had fifteen million cases. This year it will be also a very large number. So courts are over flooded with cases. One of the reasons is the law: there is a very broad cognition for Polish courts. Too many things are judiciable. In Poland we have greatly expanded the right of access to the court after 1989. It was a reaction to instances of abuse during the communist period, and as a reaction after 1989, access to courts was greatly expanded. So, however small the case, you can take it to court. Also, the 5-tier court system is too elaborate. Also, too many regulations that are judiciable.”¹¹²³

In light of the above empirical analysis of judicial reforms, we conclude that Poland passed its main reforms only in the early 1990s. Whereas structural safeguards for an independent judiciary were enshrined in the basic law of the country, there was no clear rupture with the old system as in the case of Estonia in terms of personnel. Most of the judges and prosecutors stayed the same, and very little training, particularly among prosecutors, took place. There were no significant judicial changes enacted before Poland joined the EU community.

Moreover, the judiciary struggled with administrative overburden and lack of adequate financial resources. Despite numerous situations of conflicts of interest among

¹¹²¹ Freedom House, *Nations in Transit Report 2011*.

¹¹²² Freedom House, *Nations in Transit Report 2010*.

¹¹²³ Anonymous (expert), interviewed by author, Warsaw, September 2016.

policy-makers and public officials, these were not addressed almost at all in the 1990s. These issues are highly problematic particularly for the realm of corruption investigations that are resource-intensive processes. Moreover, the lack of possibility to coordinate financial matters at least in a co-shared manner with the Ministry of Justice, in this regard, puts significant pressure on the independence of the judiciary, including prosecution, to carry out effective investigations and prosecution of corrupt practices among the higher echelons of power.

Furthermore, evidence shows that there are multiple points of entry for excessive executive interference in judicial affairs. These have not been addressed through reform and remain vulnerable weaknesses that can potentially be exploited. Hence, evidence shows that the executive is in fact exerting influence over the judiciary: via administration of the lower courts by the Ministry of Justice, court presidents with expanded competences who are explicit representatives of the executive, the management of the court budgeting process, influence over the recruitment and appointment of judges, and politicization of the prosecution. Despite some post-accession reforms, these tendencies are exacerbated even more under the current government.

Explaining infrequent cases of high-level corruption

High-level prosecutions involving corruption scandals are a very rare occurrence in Poland today.¹¹²⁴ There is general agreement among interviewed experts however that judges are independent if cases reach their desk. Yet it is on average only one-two cases a

¹¹²⁴ Anonymous (expert), interviewed by author, Warsaw, September 2016.

year.¹¹²⁵ A reason oftentimes mentioned is the multifaceted nature of corruption that makes the evidence-gathering process a time-consuming and complex endeavor that requires advanced skills, technology, and competences. This specialized knowledge requires intense resources. Resources for the judiciary are controlled and coordinated, as evidence shows, by the Ministry of Justice whose criteria for resource allocation are a reason for concern. Hence, a more empowered judicial branch, that would be able to tackle corruption more effectively, rests upon the allocation of resources that it does not have a say on.

Moreover, the prosecutor's work is quite secretive and there is very little to no transparency in terms of how data are collected, and how cases are investigated.¹¹²⁶ Cases of corruption are highly sophisticated, and require specialized knowledge and coordination among the various law enforcement institutions. Moreover, cases require non-interference on behalf of the executive, which, as evidence shows, is not the case. The current institutional design of the prosecution but also the one that existed before the more recent reform, has not promoted independent investigation and prosecution of cases of corruption. Finally, cases of corruption in courts are not treated differently than other cases.¹¹²⁷ There is no direct evidence of that however since very few complex cases of corruption reach judges' desks in the first place.

There are some cases that indirectly speak about the additive role of an independent judiciary towards curbing corrupt practices. A noteworthy case of judicial enforcement of the Constitution occurred, in this regard, in 2002. The case concerned the Ministry of Finance that proposed to pardon tax evaders in an attempt to contain fiscal

¹¹²⁵ Anonymous (judge), interviewed by author, Warsaw, September 2016.

¹¹²⁶ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹²⁷ Anonymous (expert), interviewed by author, Warsaw, September 2016.

deficits. In this sense, the persons who had not paid their income taxes in the previous years could make a one-time payment of twelve per cent in exchange for an amnesty for their earlier tax evasions. Later that year the constitutional court invalidated the new law declaring it unconstitutional. According to Freedom House, this “was a good indication that the Court was willing to disagree with the legislature on key issues of public policy” thus proving its independence.¹¹²⁸

Two other events the same year, however, illustrate that in more sensitive realms, courts might not be willing to take a stand. The Parliament, in the first case, introduced changes to the party finance law that stated that, “if a political party fails to correctly settle and disclose its campaign finances, it will lose 100 percent of its budget grants for three years.”¹¹²⁹ According to the amendment adopted, the party was to lose only ten per cent. According to Freedom House, “most parties supported this move, as they all seem to have difficulty explaining how they finance their campaigns.”¹¹³⁰ The court did not intervene, however. In the second case, according to the same source, “the standards for parole and bail for businessmen suspected of criminal activity were shown to be far from uniform. Those with closer ties to the government received much lower bail limits, which enabled them to leave the country rather than face prosecution.”¹¹³¹ Again, the court did not intervene.

Moreover, important scandals of corruption, even if very few revealed, are known for having a significant impact on Poles’ perception about corruption in their country as well as about the capacity of law enforcement bodies to deal with such cases. These have

¹¹²⁸ Freedom House, *Nations in Transit Report 2003*.

¹¹²⁹ Freedom House, *Nations in Transit Report 2003*.

¹¹³⁰ Freedom House, *Nations in Transit Report 2003*.

¹¹³¹ Freedom House, *Nations in Transit Report 2003*.

also historically taken down governments and discredited political parties and public institutions.¹¹³² In this context, the CBA in its incipient stage of activity has severely discredited itself when it was caught using illegal methods to provoke cases of corruption.¹¹³³ Due to terms of appointment¹¹³⁴ and methods used, the CBA is therefore oftentimes publically perceived as, and accused of being a tool for solely targeting political opposition. Moreover, there is weak coordination of activities among the police, prosecution and the CBA when investigating corruption, which is a critical endeavor especially in high-profile investigations.

At national level, the Amber Gold banking scandal in 2012, according to an interviewed expert, represents a “spectacular case of failure” for the prosecutors and a number of other institutions¹¹³⁵, as well as for the Polish legal system more generally:

“The regional prosecutor in Gdańsk, who has now been dismissed, failed to consider the case against Amber Gold properly, and repeatedly took Mr Plichta’s statements at face value. This is all the more surprising considering that the youngster already had nine convictions to his name, most of them for fraud, and that the company had failed to file proper accounts even once. This has fed frenzied suspicion among opposition media that there may be more than incompetence at work here. But no evidence has come to light.”¹¹³⁶

Evidence shows in this regard that the politicized prosecution system is in the Polish case a serious impediment in tackling cases of corruption. At the same time, independence without inbuilt accountability mechanisms may also be harmful to the process, as the incomplete 2009-2015 prosecution reform has proven.

Conclusion

¹¹³² Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹³³ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹³⁴ The CBA Director is appointed for a single 4-year term and can be recalled by the Prime Minister. <http://www.cba.gov.pl/en/about-the-cba/management/30,Management.html> (accessed on May 25, 2016).

¹¹³⁵ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹³⁶ <http://www.economist.com/blogs/easternapproaches/2012/08/polands-shadow-banking-scandal> (accessed on May 25, 2016).

In light of this empirical analysis of the main aspects that define a judiciary's capacity to sanction effectively corruption, this chapter finds evidence, though inconclusive, in support of the second hypothesis, and namely, that states with strong and independent judiciaries are more likely to contain corruption after accession. To conclude on the Polish case, evidence has revealed certain caveats both in the institutional framework and in the decisional independence of the main actors. The judiciary, in this regard, has not experienced radical transformations in the early 1990s. Yet, the government has enshrined in the Constitution the structural safeguards for an independent judiciary.

Among the main identified caveats evidence highlights the lack of a separate self-governing body that would represent the judiciary as a branch of power (despite the existence of the NCJ); the administrative supervision of the common courts by the Ministry of Justice; the lack of functional capacity of prosecutors due to their subordination to the executive; the lack of a separate state budget line for the courts, and the limited input of judges in resource allocation, facts that significantly undermine judicial system's independence and capacity to hold accountable the other two branches of government in cases of corruption, particularly. These issues have also been highlighted by judges to be in need of reform.¹¹³⁷

In this context, we do attest an amplified executive influence over the law enforcement bodies that stem mainly from the institutional loopholes identified above. This has been especially the case on behalf of the current government that, among other controversial reforms, has also boldly moved onto incapacitating the judicial system's

¹¹³⁷ Anonymous (judge), interviewed by author, Warsaw, September 2016.

main institution responsible for safeguarding the rule of law, the constitutional tribunal. Previous governments however, have also attempted at influencing the judiciary via existing institutional weaknesses therefore the current one is not an exception only if in the magnitude of its controversial reforms. The influence exerted on the judiciary (including prosecution) is undermining the capacity of these institutions to control corruption more effectively.

Despite the latest developments and the existing structural weaknesses, we do attest an improvement both in the rule of law and control of corruption indices for Poland starting 2007 (see Figure C.2(f)).¹¹³⁸ The developments in the judiciary partly explain the strong correlation between the two indicators. The main reforms in the judiciary have taken place in the 1980s and early 1990s, which explain why Poland has started with a generally high score on the rule of law relative to its neighbors. There have been no subsequent judicial reforms implemented until the first years after accession, while the courts became gradually clogged due to the high number of cases brought to the courts. Concomitantly, a vast body of legislation has been adopted since the end of the communist era. According to Freedom House, “since 1989, the Parliament adopted almost 3,000 laws and over 20,000 decrees, out of which 58 percent were intended to modify preexisting regulations.”¹¹³⁹ As a consequence, Polish legislation becomes difficult to be enforced. Corruption was hence rarely sanctioned in the 1990s mainly due to overburdened courts, and the low capacity and inactivity of prosecutors to investigate cases.

¹¹³⁸ World Bank, *World Governance Indicators*.

¹¹³⁹ Freedom House, *Nations in Transit Report 2010*.

Further, the establishment of the CBA as a separate anti-corruption agency, the subsequent minor reforms that have been analyzed above, as well as the separation of the position of Minister of Justice and Prosecutor General in 2009 have helped improve the control of corruption and the rule of law scores. It is difficult to say however if it has in fact improved the actual anti-corruption performance of the state beyond the indicators. The CBA's active role, though thought to be politically motivated, has been mentioned in interviews as a crucial factor in decreasing the tolerance towards corruption as a social phenomenon, and increasing the costs of corrupt behavior.¹¹⁴⁰ Hence, the positive but minor reforms in the judiciary after accession, the shorter judicial proceedings, but also the lower degree of tolerance towards corruption among the population have contributed to the positive change in control of corruption indices. Due to the alarming changes in the balance of checks and balances planned by the current government¹¹⁴¹ however, it is expected that the positive trends captured by various indicators may soon come to a halt.

To fully validate the tested hypothesis, we retain these findings to compare them to the Estonian and Slovak case studies, analyzed in separate chapters.

¹¹⁴⁰ Anonymous (expert), interviewed by author, Warsaw, September 2016.

¹¹⁴¹ Notes from OSCE meeting, Warsaw, September 2016.

13

Judicial Independence in Slovakia

Based on the analysis of the Slovak case, this chapter finds evidence that supports the second hypothesis. Slovakia does not have an independent judiciary or prosecution system able to sanction corruption, and is also registering worsening anti-corruption performance. In testing the second hypothesis, Slovakia represents a typical negative case that is analyzed to identify the causal process between a weak judiciary and declining anti-corruption performance. Evidence shows in this regard that the independence of the judiciary in Slovakia is only structurally highly advanced. Both the judiciary and the prosecution are heavily politicized, and therefore the objective and impartial prosecution of cases of corruption is seriously obstructed.

The main mechanisms that have been abused to concentrate discretionary powers are disciplinary proceedings, non-merit based recruitment of judges, and appointment of court (vice) presidents based on political criteria. Another significant mechanism of influencing the independence of the judiciary is the excessive interference of the executive in judicial affairs, in particular via the administration of the courts. Moreover, the prosecution system is the weakest link in the law enforcement process. It has never been subjected to reforms in the last two decades. Moreover, in the context of weak anti-corruption institutions, which have numerous embedded loopholes, Slovakia would have benefited from a truly independent judiciary to back up its institutions. The heavy politicization of the judiciary and prosecution explain why there are no prosecutions on charges of corruption despite rampant corrupt practices in the public sector.

Introduction

The Slovak judiciary did not experience major transformations in the 1990s and has never enjoyed high public trust. It underwent salient reforms only during the EU pre-accession period that put in place advanced legal safeguards for an independent judicial branch. Shortly before accession, it established a Special Court (SC) to deal exclusively with cases of corruption that proved to be an independent institution in the overall context of the Slovak judicial system. The post-accession period, however, led to abnormal accumulations and misuse of discretionary powers by the judicial branch. With the implementation of bold reforms, the short-lived Radicova's government addressed this aggravated situation at the beginning of the 2010s. The strategy employed was to promote transparency and accountability in the judiciary also partly by bringing the judiciary back under stronger executive oversight. Though considered an appropriate measure, given the "disarray and turmoil" in the Slovak judiciary¹¹⁴², the implemented reforms have undercut the autonomy of the judicial branch and significantly increased the administrative influence of the executive.

Courts enjoy the lowest level of trust in the Slovak society. Only 26 percent of citizens trust the judiciary, while 70 percent do not.¹¹⁴³ Slovakia is not included in the Rule of Law Index to be able to compare it to the other two in-depth case analyses in this chapter, yet according to the 2016-2017 Global Competitiveness Report, it is ranked

¹¹⁴² Lukasz Bojarski and Werner Stemker Koster, *The Slovak Judiciary: Its Current State and Challenges* (Bratislava: Open Society Foundation, 2012).

¹¹⁴³ Institute of Public Affairs, 2011, www.ivo.sk/buxus/docs//vyskum/subor/Vyskum_IVO_justicia-2011_oktober.pdf (accessed on 30 January 2016).

120th/138 on its judicial independence indicator, the lowest score among the three cases.¹¹⁴⁴ It also registers the lowest rule of law score among the new EU member states that joined the Union in the 2004 enlargement wave.¹¹⁴⁵ Concurrently, Slovakia's rule of law indicator for 1996-2015 is highly correlated with its control of corruption score, according to the same Worldwide Governance Indicators.¹¹⁴⁶

Empirical analysis of the institutional framework

Legal framework and organization. Before the 1989 Velvet Revolution the executive, via the Ministry of Justice, had a crucial role in the court administration process. Courts were not more than just an extension of the Communist Party carrying out routine decision-making. Moreover, they did not represent an equal power within the system of checks and balances. The Communist Party controlled the process of recruitment, nomination, appointment and promotion of judges. The most important tools of administration of the executive, in this context, were the presidents and vice-presidents of courts. Up until 1993 when the Czech Republic and Slovakia split to become independent states, the Federation shared a common judicial institutional design with the Ministry of Justice mostly at its center. Judicial independence was guaranteed via a common act of parliament.¹¹⁴⁷

¹¹⁴⁴ Klaus Schwab, *The Global Competitiveness Report 2016-2017*, World Economic Forum, http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf (accessed on 11 June 2017).

¹¹⁴⁵ World Bank, *World Governance Indicators 2015*.

¹¹⁴⁶ World Bank, *World Governance Indicators*.

¹¹⁴⁷ Act No. 335/1991 on Courts and Judges.

To meet international standards of judicial independence at the beginning of the transition process, the influence of the executive over the judiciary was somewhat curtailed.¹¹⁴⁸ Judges were appointed for life after a four-year probationary period. Moreover, the process of recruitment, nomination, appointment and promotion of judges had to be shared with the legislature up until the introduction of major reforms that began in 1998.¹¹⁴⁹ In this regard, until the passage of the 2001 constitutional amendment, there was no normative act that would provide the judicial branch an equal status to that of the executive and the legislature. Its independence was hence guaranteed by the Constitution.¹¹⁵⁰

Since the legal framework was only peripherally reformed in the initial stage of transition, the judiciary remained excessively dependent on the executive until 2001. Administration of courts, the budgeting process, and appointment of court presidents were in the realm of competence of the Ministry of Justice. According to OSI, “owing to this dependence, the level of routine involvement with and supervision by the executive (and legislature, to a lesser degree) is far greater than is desirable for maintenance of an independent judiciary.”¹¹⁵¹

The current court system in Slovakia is composed of the Constitutional Court and courts of general jurisdiction. The latter comprises of 54 district courts that adjudicate most of the cases, 8 regional courts that serve mostly as appellate courts, and the

¹¹⁴⁸ Adam Bodnar and Łukasz Bojarski, "Judicial independence in Poland," *Judicial independence in transition* (2012): 667-738.

¹¹⁴⁹ David Kosar, *Judicial accountability in the post(transitional) context: a story of the Czech Republic and Slovakia, Transitional Justice, Rule of Law, and Institutional Design* (Antwerp: Intersentia Publishers, 2010).

¹¹⁵⁰ Open Society Institute, *Judicial Independence*.

¹¹⁵¹ Open Society Institute, *Judicial Independence*, 402.

Supreme Court.¹¹⁵² The Supreme Court acts as a court of appeal for the cases that are heard by a regional court when it acts as a first-instance court in administrative matters. It self-administers its activity and, has an independent budget. Jurisdiction over army soldiers and police is granted to military courts. The Supreme Court is the last instance for the cases heard by military courts.¹¹⁵³ The Constitutional Court is composed of 13 judges who are appointed by the President of Slovakia upon nomination by the Parliament.¹¹⁵⁴ In 2003 a Special Court (later renamed into Specialized Criminal Court (SCC)) was set up to deal exclusively with cases of corruption and organized crime. The Supreme Court is the court of appeal for cases heard by the SCC, fact that grants it the final decisive role especially in grand corruption cases.

Starting 2001, the institutional independence of the judiciary was strengthened through a constitutional amendment that established the Slovak National Council of the Judiciary (SNCJ) as the main self-governing body of the judiciary.¹¹⁵⁵ The Council benefited from a transfer of wide powers in the area of recruitment and promotion of judges, recruitment and dismissal of court presidents, education and training of future judges, as well as competences over judicial disciplinary proceedings. All these competences previously belonged to the Ministry of Justice. These expanded competences that were granted to the SNCJ were later excessively misused, and the lack of accountability of the judiciary has led to a concentration and misuse of powers after 2006 by Stefan Harabin, then Minister of Justice, and later Chairman of the SNCJ and President of the Supreme Court.

¹¹⁵² Slovak Constitution, Art. 143.

¹¹⁵³ Open Society Institute, *Judicial Independence*.

¹¹⁵⁴ Slovak Constitution, Art. 134(1)(2).

¹¹⁵⁵ Slovak Constitution, Art. 141.

The negative developments in the judiciary during 2006-2010 as a result of the exploitation of the legal loopholes in the judicial system pushed the short-lived Radicova government to undertake serious systemic reforms that focused on promoting transparency in the court system and processes, as well as introducing measures of political accountability. These are discussed in the next sections. The introduced changes have had positive effects though did not manage to improve the reputation of the judiciary. Hence the current legal framework has introduced more accountability into the judiciary at the expense of some structural independence elements that have been shifted back to the executive.

Administration of the court system. The Slovak judiciary has been always characterized as heavily influenced by the involvement of the executive, as well as highly centralized. According to Freedom House, this concentration of power in the hands of the executive increased opportunities for corruption before accession.¹¹⁵⁶ This excessive interference was possible both because of how the legal framework defined the division of competences between the different powers but also the existence of informal rules that guided the daily court activity. According to Open Society Institute, until the introduction of changes in the early 2000s, “the level of routine supervision by the executive [was] far greater than [was] desirable for maintenance of an independent judiciary.”¹¹⁵⁷

In this context, until the establishment of the SNCJ in 2001, considered a critical juncture in the development of the judiciary in Slovakia, it was the executive that exercised full control over the administration of regional and district courts. The only exception to this set up was the Supreme Court, which is directly self-administered by its

¹¹⁵⁶ Freedom House, *Nations in Transit* 2003.

¹¹⁵⁷ Open Society Institute, *Judicial Independence*, 398.

President. In this context, it was in the powers of the Ministry of Justice to determine the caseload regulations, the number of judges per court, the budget allocation, and supervision of court expenditures.¹¹⁵⁸ When requested by court presidents, the Ministry was also responsible for evaluating personnel needs and creating new judicial positions. Hence the position of court presidents was a highly sought position in the judicial system mainly because of the discretionary powers and competences it offered.

According to the Slovak Constitution, the institutions of judicial self-administration are also involved in the administration of the courts.¹¹⁵⁹ Yet, they mostly have an advisory role.¹¹⁶⁰ The situation changed with the establishment of the SNCJ as the main self-administering body representing the judiciary. Some administrative competences have been shifted to the Council, yet the Minister preserved important policy-making and administrative clout. Moreover, the competences held by court presidents were limited to specific but key administrative issues, such as recruitment of court personnel, supervision of court facilities, distribution of benefits, and organization of court records and statistics. At the same time, “through the officials within the Ministry, the Minister can influence any decision or policy of court presidents relating to court administration.”¹¹⁶¹

Despite introducing merit-based competition for the positions of (vice) presidents of courts in 2011, these judicial officials represent until today the main instruments of the Ministry of Justice to exert influence on the judiciary. The (vice) presidency, in this context, is considered an administrative position within the court, carried out by a judge

¹¹⁵⁸ Open Society Institute, *Judicial Independence*, 412.

¹¹⁵⁹ Slovak Constitution, Art. 143(3).

¹¹⁶⁰ Open Society Institute, *Judicial Independence*.

¹¹⁶¹ Open Society Institute, *Judicial Independence*, 412.

who is appointed for a three-year term. Presidents and vice presidents within the court system are the representatives of the executive power.¹¹⁶² Furthermore, the power to recall from office (vice) presidents of courts, according to legal experts, is “probably the most important factor that contributed to the politicization of the Slovak judiciary over the last two decennia, because every time the coalition changes, a large part of the upper echelon of the judiciary is changed as well.”¹¹⁶³ This power is enhanced by the lack of strict criteria for the recall of court presidents from office, and the lack of possibility to appeal the decision of the Ministry of Justice.¹¹⁶⁴

Moreover, despite the existence of limits on working for the Ministry of Justice, judges are, in practice employed by the Ministry. Such situations spur “unnecessary opportunities for influence.”¹¹⁶⁵ Furthermore, a particularly affected domain in court administration is the random case assignment system.¹¹⁶⁶ Despite it being a computerized system, there has been documented evidence showing that the system has been oftentimes manipulated at the highest levels. In this context, the watchdog Fair Play Alliance submitted a criminal and disciplinary action directed at the president and vice president of the Supreme Court for purportedly “manipulating the electronic assignment system.”¹¹⁶⁷ Yet, despite reforms adopted in 2011-2012 to introduce transparency and open up the judiciary, there is still lack of transparency in daily court management and adjacent processes.¹¹⁶⁸

¹¹⁶² Bodnar and Bojarski, "Judicial independence in Poland," 98.

¹¹⁶³ Bodnar and Bojarski, "Judicial independence in Poland," 98.

¹¹⁶⁴ Act 757/2004 in Bodnar and Bojarski, "Judicial independence in Poland."

¹¹⁶⁵ Open Society Institute, *Judicial Independence*, 409.

¹¹⁶⁶ Bodnar and Bojarski, "Judicial independence in Poland."

¹¹⁶⁷ United States Department of State, "Country Reports on Human Rights Practices for 2011 – Slovakia" (2010), 7.

¹¹⁶⁸ Bodnar and Bojarski, "Judicial independence in Poland."

Terms of judicial employment. The current legal framework that guides the process of selection, appointment, promotion, and dismissal of judges is deeply rooted in the developments that took place in the judiciary not only in the transition period of the 1990s, and the period after accession, but also in the set up that dominated the communist era. The political elites, by retaining the powers to recruit, appoint, and remove judges during the communist era, have highly politicized the process.¹¹⁶⁹ The limited tenure of judges impacted their independence as re-appointment by political bodies meant “they had to act reliably within the boundaries demarcated by the Party.”¹¹⁷⁰ At the same time, the institutional arrangements of disciplinary proceedings entrusted significant competences to the court presidents, who were considered the most loyal of the judges. In this context, the composition of disciplinary senates was extremely contingent upon court presidents. Presidents’ judicial career paths, however, were also decided by the political elites through the power to promote, appoint and dismiss them.

Appointment of judges remained a highly politicized process also after the break up of the Czechoslovak Federation, where judges, at the nomination of the government, were elected by the Parliament for a four-year term first, and only after re-election were granted life tenure.¹¹⁷¹ Despite adjusting the judicial legal framework to meet most international standards of judicial independence in the years before accession, relics of these hierarchical institutional arrangements where political elites play a central role can be seen in today’s legal framework as well.

¹¹⁶⁹ The Czechoslovak Constitutional Act 64/1952 on courts and procuracy of October 30, 1952.

¹¹⁷⁰ Samuel Spac, “Judiciary Development After the Breakdown of Communism in the Czech Republic and Slovakia,” Master's thesis (Central European University, 2013), 40.

¹¹⁷¹ The Slovak Constitutional Act 420/1992 of September 1, 1992.

At present, the status of judges, presidents and vice presidents of the Supreme Court is stipulated in the Slovak Constitution. In this context, the President of the Slovak Republic appoints judges for life tenure, but can also recall them at the proposal of the SNCJ.¹¹⁷² The President also appoints the thirteen judges of the Constitutional Court, in this context, for a 12-year term at the nomination of the parliament that presents two candidates for each position to be filled.¹¹⁷³ Further, the President as well appoints the chief and deputy chief justices at the nomination of the SNCJ from among the judges of the Supreme Court for a 5-year term for maximum two consecutive terms. Moreover, the president can also recall them for reasons specified by law.¹¹⁷⁴ Judges can as well be transferred to a different court but only with their consent or as a result of a decision of a disciplinary senate. The Constitution also stipulates that judges and judicial officials can be suspended from office only based on reasons laid down by law.

This current legal framework that guides judges' career displays clear safeguards enshrined in the law, but also portrays openings for an increased level of political interference on behalf of the executive and the legislature. These regulations represent the outcome of a tumultuous reform process in the judiciary, and mostly of the major reforms passed by the short-lived Radičová government in 2010-2012 as a result of the abuses of power occurring in the judiciary after accession.

In this sense, until 2001 the executive had a strong leverage over the judges since they needed to be reelected after the first four-year term. With the adoption of the constitutional amendment in 2001, the authority over the election of judges was transferred to the SNJC. This transfer of powers away from the executive represented a

¹¹⁷² Slovak Constitution, Art. 145.

¹¹⁷³ Slovak Constitution, Art. 134(1)(2).

¹¹⁷⁴ Slovak Constitution, Art. 145.

juncture for the Slovak judiciary that granted the SNJC a key position in the recruitment and appointment of judges.¹¹⁷⁵ In the years after EU accession, there have been numerous instances of abuse of power within and by the judiciary that hinted at, according to the Open Society Foundation's report, "the politicization and polarization of the judiciary, the abuse of arbitrary disciplinary proceedings against the opponents of the President of the Supreme Court, some of which were 'in conflict with the internationally accepted standards regarding the independence of the judiciary.'"¹¹⁷⁶

To address these issues, then Minister of Justice, Lucia Žitňanská, put forward in 2011 an amendment that reconfigured the composition of committees responsible for evaluating and selecting judges, hence "shifting the majority in favor of politically nominated members, and introduced a selection procedure for every emptied seat."¹¹⁷⁷ In this context, trainee judges cannot fill vacancies as it happened until then, since it represented a major test for loyalty of newcomers to the system. Also, starting with 2012, the President of Slovakia has been granted the power to refuse the appointment of a candidate elected by the SNJC, and to dismiss judges and court presidents. Since 2011, disciplinary senates have been opened to more oversight stemming from outside of the judiciary. In this regard, they have to also include non-judicial members nominated individually by councils of judges, Minister of Justice, and the Parliament but still elected by the SNJC.¹¹⁷⁸ In this sense, the 2011 reform distilled these powers that were exclusively competences of the SNJC (composed of a majority of judges) at the time of EU accession. It has introduced as a result "a rather mixed model where the dominance of

¹¹⁷⁵ Slovak Constitutional Act 460/1992 amended by the Slovak Constitutional Act 90/2001.

¹¹⁷⁶ Commission for the Evaluation of the Efficiency of Justice of the Council of Europe, "Evaluation of European Judicial Systems" (2012), 117.

¹¹⁷⁷ Spac, "Judiciary Development," 50.

¹¹⁷⁸ Slovak Parliamentary Act 385/2000 on judges and associates (amended by the Act 467/2011).

political nominees is counterweighted by senate members elected by councils of judges.”¹¹⁷⁹

Slovak National Council of the Judiciary (SNCJ). The establishment of the SNCJ represents a critical juncture in the developments regarding the independence of the judiciary in Slovakia. The February 2001 amendment mandates the establishment of SNCJ as the constitutional representative of judicial power. The chairman of the SNCJ was also the President of the Supreme Court, according to the Constitution, until 2014 when the two positions have been split. Moreover, the president of the Supreme Court is not elected by his peers but by Council members.¹¹⁸⁰ The Council consists of a total of 18 members elected or appointed for maximum two consecutive five-year terms: eight judges elected and recalled by their peers, and nine members appointed and recalled by the legislature and the executive.¹¹⁸¹ The composition of the SNCJ, in this respect, does not meet the internationally accepted standard: at least half of the council has to be composed of elected judges.

Moreover, the law does not specify whether the representatives appointed by political forces need to necessarily be judges. The total number of judges on the Council therefore is always different: the minimum of 13 judges was registered between 2002-2006, and the maximum of 17 judges between 2007-2010.¹¹⁸² The composition of the SNCJ is therefore changing as each new government appoints its representative members from anew. This regulation is an important weakness that can affect the balance of the Council from one government change to another.

¹¹⁷⁹ Spac, “Judiciary Development,” 52.

¹¹⁸⁰ Bodnar and Bojarski, “Judicial independence in Poland,” 87.

¹¹⁸¹ Slovak Constitution, Art. 141a.

¹¹⁸² Samuel Spac, “Better Safe than Sorry: Czech and Slovak Paths to Secure Independent Judiciaries,” Conference Paper (August 2015).

Upon the establishment of SNCJ, there was a “massive shift of competences” from the executive to the Council that took place in every aspect of judicial path development.¹¹⁸³ Yet, in this regard as well, the SNCJ does not fully meet the standard criteria that the research on judicial councils in Europe identifies.¹¹⁸⁴ The Council hence is a self-governing institution, it carries out its activities independently from the executive and the legislature, performs as a midway institution between the legislative-executive and the judiciary, but it does not hold any competences over the budgetary process.¹¹⁸⁵ The SNCJ in this regard, can express its opinion on the budget proposed to the legislature for the judiciary, but it bears no financial responsibility for resource allocation and the de facto expenditures. Hence, this is another loophole that weakens the judiciary’s financial independence against the executive.

The SNCJ plays a key role in the process of formation of committees for the recruitment of new judges. In this regard, the selection committees consist of 5 members nominated by different stakeholders. Until 2011, judges had a majority of votes on these committees by having the SNJC nominate two of their members. As a reaction to the negative developments in the judiciary, the May 2011 reform introduced changes to the composition of selection committees and limited the role of the SNJC in favor of the executive.

According to the new system, the president of the court where there is a vacancy appoints four members on the selection committee. These are selected from a database of elected or appointed candidates specially set up for the creation of selection committees:

¹¹⁸³ Spac, “Better Safe than Sorry.”

¹¹⁸⁴ W. Voermans, “Council for the judiciary in Europe: trends and models” in *The Spanish Constitution in the European Constitutional context*, ed. F.R. Segado, 2003, 2133-2144.

¹¹⁸⁵ Lukasz Bojarski, *The Slovak Judiciary: its current state and challenges* (Bratislava: Open Society Foundation, 2011), 97.

one member is elected by parliament, one by the SNJC, and two members are appointed by the Minister of Justice.¹¹⁸⁶ Hence, the Ministry of Justice and the parliament are appointing three out of five members on the selection committees. Experts perceive this change in procedure interference on behalf of the political forces in the process of recruitment of judges. The Government has a different stand, however. The changes in the recruitment process of new judges set up

“a legal mechanism for the selection procedures and creation of the selection committee which will ensure the selection of the best quality candidates, including the court presidents, and equal opportunities for all candidates. (...) In order to break the inappropriate closeness of the judiciary, most of the members of the selection committee will not be appointed by the judicial institutions.”¹¹⁸⁷

Moreover, the SNCJ decides on the composition of disciplinary committees, and has the right to appoint and recall the presidents of the tribunals of the disciplinary courts. In this sense, the SNCJ has the right to appoint anyone from the list of the different nominators: regional judicial councils, the legislature, and the Ministry of Justice. This is an important mechanism that has been oftentimes misused by the Chairman of the SNCJ, Stefan Harabin to punish fellow judges who were not loyal to him.

Furthermore, the SNCJ can veto the suspension of a Supreme Court judge by its president or of any other judges by the Minister of Justice. According to experts,

“accumulation of (discretionary¹¹⁸⁸) powers may occur when the president of the court who instigated the disciplinary proceeding is an elected or appointed member of the SNCJ and in the case when the suspended judge is a Supreme Court judge, because the president of the Supreme Court is by Slovak Constitution at the same time the president of the SNCJ.”¹¹⁸⁹

Moreover, this model of a dual role as the president of the Supreme Court and the Chairman of the SNCJ is commonly encountered in Europe. However, it has the potential

¹¹⁸⁶ Act 385/2000, paragraph 29(91).

¹¹⁸⁷ Government's Policy Statement of June 2010, cited in Bojarski, *The Slovak Judiciary*, 93.

¹¹⁸⁸ Art. 22(3) of Act 385/2000 does not specify that the decision to suspend a judge needs to be justified.

¹¹⁸⁹ Bojarski, *The Slovak Judiciary*, 102.

to be misused due to a concentration of discretionary powers, and therefore the viability of such a model needs to be assessed against the national context. In the Slovak case, this configuration has raised serious concerns while Harabin held both positions for years, and therefore, experts have suggested to separate the two posts, a constitutional amendment that the government later adopted in 2014. This reform is considered a positive development towards the depoliticization of the judiciary¹¹⁹⁰, but de facto results are still early to be assessed.

Financial Autonomy. Regional and district courts do not have separate budgets in the state budget law. They are financed from the budget of the Ministry of Justice. In this regard, the Minister of Justice negotiates the budget for the judiciary in annual intra-governmental negotiations.¹¹⁹¹ General courts hence have to fully rely on the Ministry of Justice for their financing. The Ministry is in this respect both the administrator and the distributor of financial resources for the lower courts. The court presidents hold a consultative role only by sending in financial requests. The final decision regarding the allocation of funds to individual courts lies in the hands of the Minister of Justice. It is also the Minister of Justice who is solely politically responsible for how the annual budget is spent while the president of the court is only responsible for the adequate administration of the budget that has been allocated to his court. The Constitutional Court, and since 2001, also the Supreme Court are the only courts that have a separate chapter in the state budget, and are responsible for the self-administration of their budgets.

¹¹⁹⁰ Freedom House, *Nations in Transit* 2010.

¹¹⁹¹ Act No. 305/1995 on Budgetary Rules.

At least until Slovakia joined the EU, there was no evidence of intimidating or coercing the judiciary in regards to the budgeting process by making financial resources conditional upon court performance.¹¹⁹² From the interviews carried out in Slovakia, the financial dependence of the judiciary on the Ministry of Justice also did not come up as an issue of concern for the independence of the judiciary.

Public Prosecutor's Office. The prosecution system in Slovakia is an intrinsic part of the executive. Together with the police, it falls under the subordination of the Ministry of Interior.¹¹⁹³ It is very hierarchically organized and has not been subject to reforms since the communist era.¹¹⁹⁴ According to experts, prosecution is as closed nowadays as was the judiciary in the 1990s.¹¹⁹⁵ The General Prosecutor's Office (GPO) includes also the Office of the Special Prosecutor (SPO), which deals with cases of grand corruption presented before the Specialized Criminal Court (SCC). The legislature elects the Special Prosecutor at the proposal of the General Prosecutor based on competitive proceedings.¹¹⁹⁶ The President at the proposal of the legislature appoints the General Prosecutor. Slovakia also has regional and district prosecution offices.¹¹⁹⁷

Paradoxically, the legal framework corresponds to the most highly advanced international standards. It allows prosecutors to carry out their work as independent actors.¹¹⁹⁸ Concomitantly, however, it provides opportunities for undue influence, when or if considered necessary by political elites. In this sense, prosecutors are not

¹¹⁹² Open Society Institute, *Judicial Independence*.

¹¹⁹³ Open Society Institute, *Judicial Independence*.

¹¹⁹⁴ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹¹⁹⁵ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹¹⁹⁶ European Commission, *Anti-Corruption Report 2014*.

¹¹⁹⁷ Act No. 153/2001.

¹¹⁹⁸ Anonymous (expert, former journalist), interviewed by author, Bratislava, September 2016.

autonomous actors, and they are not immune to political influence, in practice.¹¹⁹⁹ These measures were embedded as accountability mechanisms. Yet, they are misused as the local reality illustrates. The current General Prosecutor, in this regard, is a former classmate of the Prime Minister in office.¹²⁰⁰

Experts seem to agree that an inactive, and highly centralized prosecution represents “the main obstacle in holding accountable officials including high profile politicians, and influential businessmen”¹²⁰¹ in Slovakia. In this context, for many NGOs the monitoring and oversight of the prosecution system became a priority in the last 3-4 years¹²⁰² as it is commonly agreed that investigation and prosecution of cases of corruption stop in an ineffective prosecution.¹²⁰³ That is the case because it is up to the prosecutor to decide whether there is sufficient evidence to file the case to the SCC or not.¹²⁰⁴

The Radicova-led administration, at the initiative of Lucia Žitňanská, the Minister of Justice at the time, has attempted to introduce changes to the prosecution system: decisions have to be published online, and recruitment of prosecutors needs to become more transparent.¹²⁰⁵ The implementation of these reforms has been delayed due to a change in government, and started to be somewhat followed only in January 2016, also after another change in government.¹²⁰⁶ If previously the Prosecutor General was appointing the new prosecutors, now they have to be recruited via an open competition

¹¹⁹⁹ Anonymous (expert, lawyer), interviewed by author, Bratislava, September 2016; Anonymous (journalist), interviewed by author, Bratislava, September 2016; Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁰⁰ Anonymous (expert, former journalist), interviewed by author, Bratislava, September 2016.

¹²⁰¹ Anonymous (expert, lawyer), interviewed by author, Bratislava, September 2016.

¹²⁰² Most active watchdogs include Via Iuris, TI Slovakia, Fair Play Alliance, Anti-Corruption Foundation.

¹²⁰³ Anonymous (experts), interviewed by author, Bratislava, September 2016.

¹²⁰⁴ Anonymous (judge), interviewed by author, Banská Bystrica, September 2016.

¹²⁰⁵ Freedom House, *Nations in Transit Report 2011*.

¹²⁰⁶ Anonymous (expert, former journalist), interviewed by author, Bratislava, September 2016.

assessed by a six-member committee: three proposed by the GPO, and three by the legislature. Prosecutors are appointed for a maximum of two consecutive five-year terms, while the General Prosecutor and the Special Prosecutor are limited to only one term. These changes come as improvements to the prosecution system, but their impact is still early to be assessed.

Between 2011-2013 Slovakia did not have a General Prosecutor because the President refused to appoint the elected candidate, Jozef Čenteš, “due to a standoff between President Ivan Gašparovič and the Radičová government that developed into a broader struggle between the ruling coalition and the opposition.”¹²⁰⁷ This fact has negatively affected the public trust in an independent prosecution system.¹²⁰⁸ Moreover, the trust in prosecution has been repeatedly impacted when in 2013 the Parliament increased the powers of prosecutors by adopting a law that allows them to request court files also in the cases where they are not part of the proceedings.¹²⁰⁹

Experts identified several critical weaknesses that make the prosecution system a weak law enforcement body. First, the appointment procedure of the General Prosecutor is highly politicized. The recruitment procedure is also considered very non-transparent and problematic.¹²¹⁰ These are particularly salient aspects because, according to legal experts, the General Prosecutor has very strong powers in terms of appointing and dismissing prosecutors. He also has the right of negative command, meaning that he can stop a case from being investigated without providing reasoning for his decision. Moreover, the General Prosecutor has the power to intervene in any ongoing proceedings,

¹²⁰⁷ Freedom House, *Nations in Transit Report 2011*.

¹²⁰⁸ European Commission, *Anti-Corruption Report 2014*.

¹²⁰⁹ Freedom House, *Nations in Transit Report 2013*.

¹²¹⁰ Anonymous (expert, lawyer), interviewed by author, Bratislava, September 2016.

which means that, “all the lower level prosecutors know that eventually someone could look over their shoulder.”¹²¹¹ He can also change the prosecutors for a particular case without providing any reason. Another tool of exerting influence on prosecutors is via disciplinary proceedings. The General Prosecutor decides who will be prosecuted, and he also decides if the prosecutor will be held responsible or not, hence being simultaneously the accuser and the decider. These powers make him a Tsar in the prosecution system¹²¹², fact that explains the highly politicized nature of this position.

Second, there is lack of transparency and accountability when it comes to the prosecutors’ activity.¹²¹³ It has been characterized as a “very closed system”, “a black box”, with very little public knowledge and transparency of what happens inside the system.¹²¹⁴ The Prosecutors’ Council is exclusively composed of prosecutors, no other power or sector of power is represented in it, and therefore there is almost no external or public oversight.¹²¹⁵ Furthermore, this lack of transparency in prosecution is considered to have led to the expansion of nepotistic ties, a salient problem affecting the system.¹²¹⁶

Specialized units. In 2003, Slovakia has set up a Special Court to hear exclusively high-profile cases of corruption, money laundering, and organized crime. Its creation was driven by the increased influence of criminal gangs and local elites exerted on ordinary lower courts.¹²¹⁷ In 2009, after four years of operation, the Special Criminal Court (SCC) replaced the Special Court, and took over its agenda. Its competences have been expanded, however, and currently it also adjudicates on more general criminal

¹²¹¹ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²¹² Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²¹³ Anonymous (expert, former journalist), interviewed by author, Bratislava, September 2016.

¹²¹⁴ Common denominations used in interviews with Via Iuris, TI Slovakia, Fair Play Alliance.

¹²¹⁵ Anonymous (expert, lawyer), interviewed by author, Bratislava, September 2016.

¹²¹⁶ Freedom House, *Nations in Transit Report 2014*.

¹²¹⁷ Anonymous (judge), interviewed by author, Banská Bystrica, September 2016.

matters.¹²¹⁸ It acts as a trial court of first instance and its decisions can be appealed at the Supreme Court.¹²¹⁹ It has been quite effective in addressing cases of organized crime and local level corruption.¹²²⁰ Yet, it has not ruled on any high-profile national level cases of corruption.¹²²¹ Interviewed experts agree that it is the prosecution system at the core of proliferation of corrupt practices in the public sector rather than the SCC.

The SCC consists of 13 judges who rule on more serious cases in panels of three members, and a decision is taken by majority rule. Judges are appointed and removed by the same procedure that applies to regular judges. They also enjoy special employment conditions. The most important one is a higher pay, fact that created discontent among the other judges. This pay differential was, however, necessary because initially there was no interest on behalf of judges to serve on the court considering the increased risks this particular position entailed.¹²²² The initial pay differential was somewhat lowered in 2009 but judges on the SCC still enjoy higher salaries. Moreover, as a result of a 2014 constitutional amendment, SCC judges are required to obtain security clearance.¹²²³

The main impetus behind the creation of the SCC was the concerns about judicial professional ethics and protection of judges from physical threats in salient cases that involved organized criminal networks, and powerful local economic and political elites.¹²²⁴ From this point of view, experts consider that the shift of cases from the local courts to the SCC helped address corruption at local level. At the same time, the court has

¹²¹⁸ https://e-justice.europa.eu/content_specialised_courts-19-sk-en.do?member=1.

¹²¹⁹ Act No. 291/2009 on the Special Criminal Court.

¹²²⁰ Matthew Stephenson, *U4 Brief: Specialised Anti-Corruption Courts: Slovakia* (Anti-Corruption Resource Center, 2016).

¹²²¹ Anonymous (Jjudge), interviewed by author, Banska Bystrica, September 2016.

¹²²² Stephenson, *U4 Brief*.

¹²²³ Radka Minarechova, "New Security Clearances for Judges Implemented," *Slovak Spectator*, 2015, <http://goo.gl/9BiJTN> (accessed on October 12, 2016).

¹²²⁴ Stephenson, *U4 Brief*.

not heard any case against high-profile political figures. So its strong reputation for independence has not been put yet to a test. According to an investigative journalist who deals with investigations of high-profile cases of corruption,

“We cannot really say something about judiciary because the cases are stopped before they get to court. Even when the police does a good job with serious evidence gathering, the investigation is stopped by the prosecutors’ office. The prosecutors’ office often sends the case back to the police claiming that they need some more information or they just do not file the case to the court. So we cannot really say anything about the court.”¹²²⁵

On the other hand, experts agree that the Office of the Special Prosecutor (OSP) plays a key role for why there are no cases of grand corruption heard by the SCC. In this context, OSP has failed to bring in cases before the court even when strong evidence was available.¹²²⁶ At the same time, according to a SCC judge, the result of a trial is very often dependent on the performance of prosecutors.¹²²⁷ These are oftentimes professionally unprepared, however, or even incompetent for the type of cases they deal with.¹²²⁸ It is considered hence the weakest link in the chain of prosecution of salient cases of corruption. Another key actor is the Supreme Court, which is the court of appeal for the SCC. According to sources close to the Ministry of Justice, even if there are special selection criteria for the judges in the SCC when it comes to judicial integrity, they do not apply to judges sitting in the Supreme Court. In this sense, the composition of the senate hearing a case in the Supreme Court can be the decisive factor in the outcome of a high-profile case if it gets appealed.

The SCC has been a good attempt to solve the task of disrupting local connections between public figures and the justice system. At the same time, “politicians,

¹²²⁵ Anonymous (journalist), interviewed by author, Bratislava, September 2016.

¹²²⁶ Stephenson, *U4 Brief*.

¹²²⁷ Anonymous (judge), interviewed by author, Banská Bystrica, September 2016.

¹²²⁸ Anonymous (expert), interviewed by author, Bratislava, September 2016.

unfortunately, understood quite quickly that such a court might threaten their feeling of impunity.”¹²²⁹ This is considered to be the main reason why in 2006, the newly-appointed Ministry of Justice, Harabin, “launched a systematic campaign to abolish the Special Court and Office of the Special Attorney, a source of serious concern because these two offices have become effective tools in the campaign against corruption and organized crime.”¹²³⁰ Hence, despite the lack of hard evidence of whether the SCC would act independently on cases of grand corruption, the preventive measures that were undertaken by the executive serve as signals that this institution could be in fact an effective tool in sanctioning corruption occurring in the higher echelons of power.

Empirical analysis of main judicial reforms

Main judicial reforms. Slovakia underwent two waves of salient reforms that affected the independence of the judiciary, and the branch’s subsequent capacity to handle cases of corruption: the 1998-2004 pre-accession period reforms, and the Radicova-led government reforms in 2010-2012. The pre-accession reforms shifted significant powers from the executive to the judiciary, and namely to the freshly created SNCJ, as well as to the President of the Supreme Court. The numerous abuses of judicial powers that occurred after accession, led the Ministry of Justice, Lucia Zitnanska, to partly redirect some of the competences back under the coordination of the executive.

The 2010-2012 reforms, in this context, sought to introduce transparency and accountability measures in the judiciary to fight the accumulation of discretionary powers

¹²²⁹ Email conversation with policy-maker, September 2016.

¹²³⁰ Freedom House, *Nations in Transit Report 2007*.

in the hands of a single person, Stefan Harabin. He was the Minister of Justice during 2006-2008, and afterwards held in parallel the position of President of the Supreme Court and that of Chairman of SNCJ during 2009-2014. These reforms are generally perceived as positive developments for the judiciary, despite increased involvement of the executive. Inadequate implementation brought by a sudden change in governments yet left many proposed changes on paper. In this regard, the planned reforms did not open up the judiciary to more accountability, and did not limit its entrenched politicization.

A salient reform in the judiciary in the early 1990s was the lustration law, which arguably had a minimal impact in the Slovak case. There is no evidence of how many judges have left the judiciary (mostly for better paid positions in the private sector) but the expected radical changes did not occur.¹²³¹ In 1998, with the end of the Meciar era, and the beginning of the EU accession negotiations, the European Commission signaled clearly to Slovak authorities that the reform of the judiciary is expected if they were to be extended EU membership.¹²³² In this context, bold reforms have been adopted to transform the judiciary in a truly independent branch of government.

The EU accession period brought numerous reforms seeking to strengthen the independence of the Slovak judiciary. With the 2001 constitutional amendment and the Act No. 385/2000 on Judges and Lay Judges, broad competences especially regarding the recruitment and career path development of judges have been shifted from the Ministry of Justice to the newly created SNCJ as the constitutional representative of the judicial power. Also a new criminal code and a code of criminal procedures were adopted in 2004 that introduced additional categories of criminal offenses, adequate sanctions, and

¹²³¹ Spac, "Judiciary Development After the Breakdown of Communism."

¹²³² Anonymous (expert), interviewed by author, Bratislava, September 2016.

facilitated more effective judicial proceedings.¹²³³ Important anti-corruption mechanisms also were adopted as part of these reforms. Random computer assignment of cases was adopted to limit the possibility of affecting the case selection process.¹²³⁴ Also a specialized court to deal with cases of corruption and organized crime was set up in 2003 as part of this process. At the time of adoption of these changes, which were mostly set to limit possibilities of executive undue influence, OSI already had highlighted that “the process of selecting judges is insufficiently grounded in transparent and neutral procedures that would limit the opportunities for undue executive or intra-judicial interference.”¹²³⁵ The enacted reforms therefore were not addressing the needs of the judiciary in this regard.

Once Slovakia joined the EU, the pace of judicial reforms slowed down significantly.¹²³⁶ Moreover, with the appointment of a new Minister of Justice, Stefan Harabin in 2006, existing loopholes in the legal framework were put to a test. Acting fully within legal boundaries, he replaced several court presidents without satisfactory reasoning, and worked actively to abolish the freshly established Special Court.¹²³⁷ Legal experts interpreted his actions as going against the principle of judicial independence. Moreover, during 2006 and 2007 there was evidence of political pressure on the process of recruitment of new candidates for the Constitutional Court.¹²³⁸

“Their selection provoked serious misgivings and indicated government exertion of political pressure to create a new composition of the court that would be favorable for the ruling coalition. The assembly refused to elect some candidates with impressive professional backgrounds but supported others with unsatisfactory qualifications, problematic pasts, and unclear ties to special

¹²³³ Freedom House, *Nations in Transit Report 2005*.

¹²³⁴ Freedom House, *Nations in Transit Report 2003*.

¹²³⁵ Open Society Institute, *Judicial Independence*, 400.

¹²³⁶ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²³⁷ Freedom House, *Nations in Transit Report 2007*.

¹²³⁸ Freedom House, *Nations in Transit 2007-2008 Reports*.

interest groups. In several cases, the new ruling coalition preferred politically loyal candidates, casting doubts as to their independence if appointed by the president.”¹²³⁹

In 2009, Stefan Harabin was elected as president of the Supreme Court, and automatically also became the chairman of the SNCJ. For the next five years, he “continued to concentrate and/or retain personal power and also opposed all attempts by the new administration to introduce reform measures aimed at increasing transparency in the judiciary.”¹²⁴⁰ He concentrated power by “manipulating nominations and disciplinary proceedings to protect his supporters and punished his opponents, among other practices”, and by frequently attempting to sway the election results of judges to the SNCJ. Moreover, he triggered “conflicts with judges who criticized his leadership or drew attention to problems in the judiciary; he also generously rewarded those who supported him, offering them career growth opportunities and other remuneration.”¹²⁴¹

During 2010-2012, as a reaction to Harabin’s actions both as part of the executive, and later as part of the judiciary, the Minister of Justice Žitňanská introduced open and transparent selection procedures for the recruitment of judges and court presidents, changed the composition of selection committees to also include nominees by the Ministry of Justice and Parliament, and abolished the system of trainee judges.¹²⁴² Since 2012, the powers of the President of Slovakia have been expanded as well. He has the right to dismiss judges and court presidents, and not to appoint a candidate nominated by SNCJ.¹²⁴³ Another 2011 amendment introduced a mandatory law examination for

¹²³⁹ Freedom House, *Nations in Transit Report 2007*.

¹²⁴⁰ Freedom House, *Nations in Transit Report 2011*.

¹²⁴¹ Freedom House, *Nations in Transit Report 2012*.

¹²⁴² The Slovak Parliamentary Act 385/2000 on the judges and associates (amended by the Act 467/2011) cited in Spac, “Judiciary Development After the Breakdown of Communism.”

¹²⁴³ Resolution of the Constitutional Court of Slovak Republic of October 24, 2012.

judges to take every five years, and the online publication of annual reviews of judges' activities.¹²⁴⁴

The Radicova government reforms were proposed as a reaction to the negative developments in the judiciary under Stefan Harabin. Despite being considered a step in the right direction, experts agree that the enacted legislative changes nest important loopholes that might hamper the expected positive impact. Among others, in this regard, the criteria for the removal from office of (vice) presidents of courts are not clearly stipulated,¹²⁴⁵ the database of members to sit on selection committees needs more detailed provisions to eliminate discretion, the online publishing of court reasoning requires adequate judicial training since there is no local tradition of extensive court reasoning.¹²⁴⁶

The official program of the SMER-led government (2012-2016) promised the revision of the “interference in the judicial system and prosecution system made in the years 2010–11.”¹²⁴⁷ Experts expected many of the legislative changes undertaken by the Radicova government to be reversed. Expectations turned to be false, though the implementation of the reforms of the previous government were almost brought to a halt. One major reform adopted has been the 2014 amendment that separates the position of the President of the Supreme Court from that of the Chairman of the SNCJ. This separation of powers is expected to contribute to the depoliticization of the judiciary.¹²⁴⁸ It is however early to assess the effectiveness of this reform. The current government has minor reforms planned for the judiciary, and no plans to reform the prosecution. It is

¹²⁴⁴ Freedom House, *Nations in Transit Report 2012*.

¹²⁴⁵ European Commission, *Anti-Corruption Report 2014*.

¹²⁴⁶ Bodnar and Bojarski, "Judicial independence in Poland."

¹²⁴⁷ Government of Slovakia cited in Freedom House, *Nations in Transit Report 2013*.

¹²⁴⁸ Freedom House, *Nations in Transit Report 2015*.

expected however that the current scandal surrounding the Minister of Interior will create the necessary public pressure at least for prosecution reform.¹²⁴⁹

According to the Freedom House 2015 Nations in Transit Report,

“[t]he judiciary continues to struggle with independence and efficiency, but the ousting of Štefan Harabín as the head of the Supreme Court and the Judicial Council is, at minimum, a symbolic victory for reformers who are working to purge the judiciary of politically motivated actors. Further reforms are, however, still necessary.”¹²⁵⁰

In light of the above empirical analysis, we conclude that Slovakia has enacted most of its reforms in the judiciary just before accession. Because of a prolonged transition period under the Meciar government, at the end of the 1990s the judiciary was still heavily politicized. The judicial reforms that followed were meant to break with the past and ensure full independence for the judicial branch. These reforms were not accompanied by accountability mechanisms however, whereas judges were not ready to handle the independence they were granted. This process led to the accumulation of discretionary powers in the hands of Stefan Harabin who misused them heavily throughout years. The consequences, as evidence shows, turned out disastrous despite a highly advanced legal framework put in place. To address some of the weaknesses inherited by the reformed judicial system, new changes have followed to increase the transparency in judicial affairs. Evidence shows that these new reforms, led to an increase in the influence of the executive over the judicial branch and the prosecution system. As of now, there are no convictions of high-profile cases of corruption.

Explaining the lack of cases of high-level corruption

¹²⁴⁹ Anonymous (expert, former journalist), interviewed by author, Bratislava, September 2016.

¹²⁵⁰ Freedom House, *Nations in Transit Report 2015*.

If we made the mistake of assessing the gravity of grand political corruption by the number of cases that an indictment has been issued on, we would conclude that there is no high-profile graft in Slovakia. The situation is however very different: there is lots of corruption but it never reaches the court. Cases involving high-profile politicians and senior bureaucrats do not reach the desks of judges. According to Freedom House,

“The relatively low number of registered corruption cases in Slovakia testifies to the low efficiency of law enforcement bodies in their campaign against graft. Furthermore, the police generally target low-level suspects rather than the public officials behind the most notorious and politically sensitive cases.”¹²⁵¹

In the early 2000s, court judgments on some cases provoked in this regard, discussions about selective justice in Slovakia since the corresponding rulings seemed to shield officials from the former Meciar government.¹²⁵² Experts highlighted the fact that it was the Meciar government that appointed the judges managing those cases. Judges, however, negated any influence on their subsequent decisions.¹²⁵³ According to experts, judges are generally independent in their rulings. Yet “when it comes to a small number of cases of those related to big business players or party leaders the situation is different.”¹²⁵⁴ If a high-profile case gets examined and a ruling is issued that is “only in very scandalous cases” that have attracted massive media attention.¹²⁵⁵ The positive role of the media, in this regard, has been highlighted numerous times in the interviews conducted.¹²⁵⁶

¹²⁵¹ Freedom House, *Nations in Transit Report 2003*.

¹²⁵² Selective justice is also mentioned as a current issue. Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁵³ Freedom House, *Nations in Transit Report 2003*.

¹²⁵⁴ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁵⁵ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁵⁶ TI Slovakia, Fair Play Alliance, Foundation to Fight Corruption among others.

From a different angle, an interviewed policy-maker mentions that another reason for no high-profile cases reaching the desks of judges is because there is no clear assignment of responsibility if the case does not get to court. In the process of investigating a case of corruption, the police and prosecutors need to closely collaborate, at the moment as the system is set up. This collaboration, according to the policy-maker, does not work well:

“Each blames each other if something didn’t work. It is better in the Czech Republic, where there is clear responsibility from head to bottom, that somebody is responsible for the case to get to the court. And now, no one is responsible. The problem is that there is no clear responsibility.”¹²⁵⁷

Prosecution statistics for 2010 show an increase in the number of cases charged with bribery, but in the view of experts, these numbers are low considering the size of the country and not representative for the scale of the problem that is depicted in national surveys.¹²⁵⁸ According to the latest data, high-level indictments are still a rarity in Slovakia.¹²⁵⁹ Prosecution, according to multiple watchdog organizations, is currently the main obstacle in holding accountable officials, including high profile politicians, and influential businessmen.¹²⁶⁰

A 2013 European Commission assessment of Slovak law enforcement bodies concluded that these experience inherent structural weaknesses.¹²⁶¹ The judiciary and the police are the weakest institutions in this regard.¹²⁶² It is not only the judiciary that is highly politicized, but also the police force that witnesses radical changes in composition of key departments, the anti-corruption unit, and the head of the police force after each

¹²⁵⁷ Anonymous (policy-maker), interviewed by author, Bratislava, September 2016.

¹²⁵⁸ European Commission, *EU Anti-Corruption Report 2014*.

¹²⁵⁹ Freedom House, *Nations in Transit Report 2015*.

¹²⁶⁰ Anonymous (experts), interviewed by author, Bratislava, September 2016.

¹²⁶¹ Assessment of the 2013 national reform program and stability program for Slovakia (Brussels, 2013) cited in European Commission, *Anti-Corruption Report 2014*.

¹²⁶² Transparency International, *2012 National Integrity System analysis on Slovakia*.

round of national elections.¹²⁶³ Moreover, most of the burden of evidence gathering lies on police investigators. According to an interviewed policy-maker this is the area where a lot of improvements need to be done at the level of management, training, and coordination of activities with prosecutors, which is currently quite weak.¹²⁶⁴ Also, “there has to be strong pressure not only on specialization but also on team work through the entire police structure, and there has to be good communication and connection with prosecution.”¹²⁶⁵ Media outlets published investigative pieces to prove that it is the prosecution and the police that stop cases from being brought to court without providing reasonable arguments, or without even explaining the arguments they have.¹²⁶⁶

Another structural weakness that impedes more effective activity of law enforcement bodies is the procedure of taking members of parliament into custody for criminal matters that is “conditioned upon approval by a simple parliamentary majority and by the parliamentary immunity and mandate committee.”¹²⁶⁷ In this sense, ruling coalitions have used this institutional arrangement numerous times to counteract votes of no confidence and reject accusations usually brought by the political opposition.¹²⁶⁸ The first Fico government (2006-2010) witnessed several corruption scandals in 2007 that involved senior politicians and public servants, such as cabinet members, senior functionaries in state-owned companies, and members of regional parliaments. Using its parliamentary majority, the ruling coalition has dismissed several motions of no confidence targeting representatives or protégées of the ruling parties.¹²⁶⁹

¹²⁶³ Transparency International, *2012 National Integrity System analysis on Slovakia*.

¹²⁶⁴ Anonymous (policy-maker), interviewed by author, Bratislava, September 2016.

¹²⁶⁵ Anonymous (policy-maker), interviewed by author, Bratislava, September 2016.

¹²⁶⁶ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁶⁷ Freedom House, *Nations in Transit Report 2012*.

¹²⁶⁸ Freedom House, *Nations in Transit Report 2008*.

¹²⁶⁹ Freedom House, *Nations in Transit Report 2008*.

Moreover, the sanctioning of political corruption does not make it a high-cost activity. Soft sanctions provided upon indictment do not deter corrupt behavior, and does not carry a threatening character for the offenders.¹²⁷⁰ In this context, the most common way of getting around a conviction for corruption is to plead guilty:

“In the last four years there were six cases of corruption in public procurement in the Ministry of Defense, but as long as these people plead guilty, they are never really sentenced. They get a three-year conditional sentence. It is not the best thing in your life to happen but it is not the worst either. The only case when you get the sentence is when corruption is related to mostly violent crimes or you just do not plead guilty. (...) As long as the sentence is below 5 years, you don’t need to go to jail, it is always conditional.”¹²⁷¹

This is mostly due to the strictness of the criminal code stipulations that are set to limit any discretion on behalf of the judges. Moreover, even if judges of the SCC would emit tougher sentences, it is not a fact that high-profile offenders would not be acquitted by the Supreme Court, which generally tends to be very formalistic and very positivistic.¹²⁷² This might also be the case because the higher ranks in the judiciary are very much politicized.¹²⁷³

Conclusion

In light of this empirical analysis of the Slovak case, this chapter finds evidence that supports the second hypothesis put forward in this study. As evidence shows, the current Slovak judicial system has a very advanced legal framework put in place that was developed mostly during the EU pre-accession period and later improved in the 2010-2012 Radicova-led administration. It is yet plagued by nepotistic ties and excessive

¹²⁷⁰ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁷¹ Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁷² Anonymous (expert), interviewed by author, Bratislava, September 2016.

¹²⁷³ Anonymous (policy-maker), interviewed by author, Bratislava, September 2016.

political interference. According to interviewed experts, one in five judges has a close relative in the judicial system (employed either in the court system or in the Ministry of Justice).¹²⁷⁴ The situation started to worsen in 2006 with the appointment of Stefan Harabin as Minister of Justice, and it continued to worsen under his chairmanship at the Supreme Court and the SNCJ. In 2010, a group of judges concerned with the developments in the judiciary under Harabin, raised the gravity of issues, such as “political interference, selection procedures not based on meritocracy, unjustified delays in court proceedings, lack of rules on ethics, misuse of disciplinary actions and insufficient transparency” by creating a new alternative representative organization for judges, “For Open Judiciary.”¹²⁷⁵ The situation has not changed much later on, however. Despite certain measures of transparency and accountability introduced in 2010-2012, “Harabin’s direct influence on high profile rulings, the appointment of judges, and self-regulatory bodies meant both symbolic and actual control over a judicial system beholden to politics and private interests”, according to Freedom House.¹²⁷⁶

In this context, the main mechanisms that define the independence of the judiciary, and have been abused to concentrate discretionary powers, are the disciplinary proceedings, non-merit based selection of judges, and appointment of court (vice) presidents based on political criteria. Another significant mechanism of influencing the independence of the judiciary is the excessive interference of the executive in judicial affairs, in particular via the administration of the courts. If in the 1990s this was a mechanism left unaddressed from the communist era, then in the 2010s and onwards it has been reintroduced as a check and accountability measure on the judiciary. Moreover,

¹²⁷⁴ Freedom House, *Nations in Transit Report 2014*.

¹²⁷⁵ <http://sudcovia.sk/en/documents/archive/211-orientation-initiative-for-open-judiciary>.

¹²⁷⁶ Freedom House, *Nations in Transit Report 2015*.

the prosecution system has been identified as the weakest link in the law enforcement process. It has never been subjected to reforms in the last two decades, and is considered as the main mechanism of intervening in the course of investigation, including in high-profile cases of corruption involving political and economic elites.

According to Jan Mazak, former President of Supreme Court, and current advisor to President Kiska,

“Slovakia is a very small country where all people know each other. It calls, naturally, for establishing really independent investigators, prosecutors and judges whose way of legal thinking should not be affected by politicians or other powerful persons. On top of that, the decisive political powers must guarantee that such brave professionals should not be haunted for their objective findings.”¹²⁷⁷

The Slovak case showed how negative developments for the independence of the judiciary led to a weakening capacity to sanction effectively political corruption after EU accession. The Slovak anti-corruption institutions are marred with loopholes that began being heavily exploited after accession. Ideally a strong judiciary would back up these weak institutions. Evidence shows that the judiciary is heavily politicized, and the prosecution is the bottleneck to why there are no cases of high-profile corruption reaching the court. In the situation when institutions are weak and there is no independent judiciary to uphold them when exploited, the anti-corruption performance is worsening. To fully validate the second hypothesis, we move forward to comparing the findings from the three case studies in the next chapter.

¹²⁷⁷ Email conversation with Jan Mazak. October 2016.

14

*Can Independent Judiciaries Explain Change in Anti-Corruption
Performance? A Comparative Approach*

In light of the evidence found in the individual case studies, this chapter tests the following hypothesis: *states that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession* (H₂). Based on the analysis of judicial institutions and reforms in Estonia, Poland, and Slovakia, this chapter employs the *structured, focused comparison* method and identifies the main similarities and differences in the independent variable between the three in-depth cases. It identifies as a result which aspects of an independent judiciary explain variation anti-corruption performance. This chapter hence reveals the key aspects of a weaker judiciary in the case of Slovakia, a moderately strong one in the case of Poland, and a strong one in the case of Estonia in explaining their respective varying levels of anti-corruption performance.

In this context, comparative to international and Western European standards, judiciaries in all three cases have advanced legal frameworks put in place that ensure their institutional independence. These differ however in their degree of politicization, or excessive interference on behalf of the executive. Slovakia's executive, in this regard, exerts the heaviest influence on judges, prosecutors, and the court system as a whole. Main executive strings are interference with the selection procedures of judges and

prosecutors, disciplinary proceedings, and the hierarchical nature of organization of the prosecution system despite more recent reforms that have been adopted.

Polish judges, on the other hand, are generally considered independent though the judicial system as a branch of government is under the heavy influence of the Ministry of Justice via the misuse of administrative and budgetary strings, in particular. Moreover, by having the Minister of Justice exercise also the function of General Prosecutor, this concentration of power immobilizes the workings of the prosecution system, especially important in cases of corruption that involves political elites. In contrast, there is no evidence of excessive executive interference in any decision-making processes related to the judiciary as a branch of government or decisional independence of judges in the case of Estonia. In the following section, criteria are compared one by one.

Empirical analysis of the institutional framework

Legal framework and organization. All three cases under review have currently advanced institutional frameworks put in place, and the principles of judicial independence are enshrined in their states' constitutions. The fundamental structural safeguards therefore do not explain the variation in anti-corruption performance, but they are a necessary element of an independent judiciary, as evidence shows. The tenets of judicial independence have been developed at different times, however, and driven by different factors. These two aspects partially explain differences in experiencing judicial independence and in understanding how it affects anti-corruption performance in each of these states. In this context, both Estonia and Poland have developed institutional

safeguards for clear separation of powers for the judiciary in the late 1980s (Poland) and early 1990s (Estonia). Slovakia has adopted major structural reforms only in the late 1990s and early 2000s as part of the EU accession process. Moreover, the Slovak reforms have not been driven by domestic needs, as it was the case in Poland and Estonia. These were motivated by the state's will to fulfill the necessary criteria to join the EU, where judicial reform was one of them.

Moreover, as the separate case studies find, the most radical institutional reforms have been implemented by Estonia in its early stages of transition. It has redesigned its court system and reappointed all of its judges. A vast majority of them were new to the system with a purely academic background. Hence, the split with its communist past was clearly marked. Poland, on the other hand, had a different experience: it adopted a basic but steady judicial framework in the late 1980s that helped smooth its subsequent transition. Generally, however, the judiciary is not considered to have experienced any drastic reforms similar to the ones implemented by Estonia. Its prosecution system, as shown, has experienced almost no changes in terms of personnel or training. Slovakia has a similar experience to Poland as no bold judicial reforms have been implemented until the late 1990s. Evidence shows that there was a clear continuity with the system it inherited from the past. The pace and timing of reforms therefore partially explains why Estonia has a more independent judiciary and prosecution system included in comparison to the other cases. These in turn explain why Estonia is a frontrunner in anti-corruption performance but not Slovakia.

Moreover, the existence in the Constitution of a separate self-regulatory body that would represent the judiciary as an independent branch of power enhances judicial

independence but does not determine it. Estonia, in this regard, does not have an official constitutional representative body, unlike Poland and Slovakia. The National Judicial Council in Poland is the main constitutional representative of Poland since 1989, but has a purely consultative role, and the executive mostly does not consider its recommendations. Moreover, both Estonia and Poland are affected by the fact that the executive has a skewed understanding of the judiciary's independence by focusing on individual judges rather than on the judiciary in its entirety. Slovakia, on the other hand, has a constitutional representative since 2001 but its competences have been limited to a certain extent due to multiple abuses of its powers. In this context, there are numerous areas for concern that jeopardize the judiciary's independence from a legal setup point of view in all three cases, and the most salient ones will be compared in the following subsections.

Administration of the court system. A common feature to all three cases is that there is no independent judicial body responsible for the administration of courts at the national level. The management of courts, in this sense, until early 2000s, both in Estonia and Slovakia has been under the full administration of the Ministry of Justice. Yet, unlike in Slovakia, there was no evidence of abuse of administrative competences on behalf of the executive in Estonia. During the pre-accession period, both countries moved to a co-shared administration of the lower courts with representative bodies of the judiciary, their respective judicial councils. In Poland, the administrative supervision of common courts is as well a competence and responsibility of the Ministry of Justice. Though it consults the NCJ on a regular basis, its recommendations are mostly not taken into account. Hence, the involvement of the executive in the court administration process is seen as

being highly problematic. In this context, despite having somewhat similar institutional frameworks for court administration, all three states experience different levels of judicial independence. It is the misuse of administrative competences as leverage over judges' decisional independence that differentiates Estonia from Poland and Slovakia. As evidence has shown, in Slovakia too many decision-making powers have been concentrated in the hands of a single person, Stefan Harabin, whose behavior was left unchecked due to the lack of corresponding oversight mechanisms and corresponding sanctions.

In this context, one of the most commonly abused administrative tools in the hands of the executive is the position of the (vice) presidents of courts. In Estonia, court presidents are selected by the Council and appointed by the Minister of Justice. This institutional arrangement poses certain risks of undue influence, but there is no evidence of it being used by the executive. On the contrary, in Slovakia, court presidents represent the main mechanism of how the Ministry of Justice keeps its administrative clout over courts and judges. Until 2011, political elites were deciding the judicial career of court presidents by holding the power to appoint, promote, or dismiss them. Court presidents, in turn, were entrusted with significant powers such as the creation of disciplinary panels. This has been reformed in 2011 yet the Minister can still influence administrative decisions of court presidents. The usage of this mechanism is considered to be among the main ones that contributed to the politicization of the Slovak judiciary over the last two decades, as the within-case analysis has shown.

Court presidents in Poland, have a term of four years, and can be re-elected for a second term at the initiation of the Ministry of Justice. Hence, even though decisions are

co-shared with the judiciary, the Ministry's right to initiate a second-term appointment grants it undue influence over court presidents interested to extend their term. Moreover, the current PiS government has increased the competences of court presidents, and has eliminated open competition for the position hence strengthening executive's potential to influence the judiciary. In this context, institutional safeguards to shield courts and judges from executive influence in the process of court administration is important though not determinant, as the case of Slovakia and Poland have shown.

Terms of judicial employment. Political elites, by retaining the powers to recruit, appoint, and remove judges during the communist era, have highly politicized the respective processes. These procedures have been reformed to different degrees in the three cases under study, and hence enhanced the independence of the judiciary by de-concentrating power from the executive branch. Overall judges do exercise decisional independence both in Poland and Estonia, as well as in the Slovak SCC. The public trust in common Slovak courts, however, is historically low. In Estonia, the decisional verticality of judges is clearly ensured in legal acts, and is subsequently practiced. While Estonian judges are appointed for life and are banned from conducting tertiary activities, Polish judges end their career at retirement and can also hold various positions within the Ministry of Justice. Slovak judges were initially appointed for four years and later reappointed for life, fact that has undermined their decisional independence in the 1990s. This legal loophole has been addressed in 2001, and now they are directly appointed for life. Yet, the process of initial recruitment still lacks transparency and effective merit-based competition.

Both members of the Polish Constitutional Tribunal and of the Estonian Supreme Court are elected for a nine-year single term, while members of the Slovak Supreme Court are appointed for a maximum of two consecutive five-year terms. The possibility of reappointment for a second term hence opens up opportunities for undue influence. The process of appointing new justices for the Polish Constitutional Tribunal is also highly politicized as it has been noticed in the current Constitutional Tribunal crisis (last update October 2016). Moreover, the fact that many justices do work for the Ministry of Justice also opens up opportunities for undue influence. Hence, the executive and the legislative have more undue influence opportunities on Polish and Slovak judges when it comes to their appointment process. Estonian judges are generally considered highly independent and enjoy public trust levels comparable to those in advanced western democracies, which is not the case for any of the other two states.

Moreover, the rules of promotion, transfer, and removal of judges are regulated by law in all three cases. In Poland and Slovakia though, as shown in the individual case studies, regulations do not always specify the exact locus of decision-making, fact that allows for discretionary interpretation and manipulation when necessary. Potentially it can also incapacitate the work of the judiciary for an undefined period of time, as in the case of Poland. For instance, in Estonia the decision-making process takes place in the Supreme Court when it comes to judicial career paths regulations. Moreover, there is no trace of politicization of the recruitment of judges or the general judicial process for that matter.

In Slovakia, in contrast, competences have been shifted back and forward between the executive and the judiciary for several times. The currently created balance

allows additional space for maneuver and interpretation especially in the judges' recruitment procedure. Also, there is too much discretionary decision-making in the conduct of disciplinary proceedings, mechanisms that have been heavily abused after accession, in particular. The current legal framework that guides judges' career paths hence displays clear safeguards enshrined in the law, but concurrently portrays openings for an increased level of political interference on behalf of the executive and the legislature.

When it comes to the independence of judges in Poland, it seems that the terms of recruitment, appointment and promotion represent a salient concern, especially in the light of the changes introduced by the current PiS government. In this sense, evidence shows that there is a lot of undue influence exerted on judges on behalf of the executive that stems from existing loopholes in the legislation. We notice hence a causal relation between the level of politicization of the judiciary and the levels of corruption within a state: the less politicized, meaning in this context more independent the judiciary is, the lower the level of corruption in that country is.

Another factor that influences the independence of judges is their remuneration and working conditions. Here as well, we notice a higher level of compensation, and better working conditions in Estonia, unlike in Poland and Slovakia. In this sense, compensation of Estonian judges' is not perceived to be threatening their decisional independence. Salaries are established by the legislature and are tied to the salaries of members of parliament. A similar situation is witnessed in Slovakia where the salary of a judge is equal to the salary of an MP. Moreover, the starting salary of a judge of first instance in Slovakia is reasonably high comparative to that of judges in Poland (2.9 times

and 1.8 times respectively the average gross annual salary)¹²⁷⁸. Comparatively hence, Polish judges are underpaid and do not enjoy satisfactory administrative support. Compensation levels for judicial work hence do not seem to match corruption levels in these three cases since Slovak judges do enjoy a higher absolute and relative annual salary than Polish judges while Polish judges enjoy somewhat higher public trust and are considered more independent than their Slovak counterparts. Hence evidence shows that there is no causal relationship between the remuneration levels of judges and the anti-corruption performance. Yet, it represents a necessary condition for judges to conduct their work-related activities effectively and be less vulnerable to opportunities to engage in corrupt exchanges themselves.

Judicial Councils. As findings from the individual case studies show, judicial councils do not enhance the independence of the judiciary as such but represent salient institutions mostly representing the body of judges in relation to the other two branches of power. Estonia, in this context, does not have one main judicial institution that would be the sole representative of the judiciary. The Council for Administration of Courts is just one of the several self-government bodies of judges. Yet, it is an important decision-making body, discussing and deciding on various aspects of administration of courts (general, financial, etc.).

Unlike Estonia, the Polish NCJ is theoretically the main representative of the judicial branch. Its competences however focus mainly on the issues surrounding the judges themselves rather than on the role and status of the judiciary as a separate branch of government. Poland's NCJ is hence not as effective as expected in enhancing its

¹²⁷⁸ Bojarski, *The Slovak Judiciary*, 116.

independence. That is due to its mere advisory role, and the fact that its function is to represent judges as individuals rather than a monolithic branch of power.

Concomitantly, the SNCJ is the constitutional representative of judicial power in Slovakia. From an institutional arrangement perspective, it is endowed with the most comprehensive powers from the three cases. The Council is a self-governing institution, it carries out its activities independently from the executive and the legislature, performs as a midway institution between the legislative-executive and the judiciary, but it does not hold any competences over the budgetary process. Yet, some of its competences have been shifted back to or had been balanced with the executive, in the hope to introduce more accountability on behalf of the judges sitting on the Council as a result of the abuses of powers and the nepotistic tendencies that entangle the effectiveness and independence of the judicial branch.

The absence of a sole independent representative for the judiciary in Estonia and the existence of a less effective Council of the Judiciary in Poland reflect the little attention and resources that were directed towards longer-term institution building in the early 1990s, a general characteristic of judiciaries in the CEE region. Most attention was devoted to “constitutional change to lock in political reforms.”¹²⁷⁹ The creation of a strong Council in Slovakia, in contrast, reflect the strong political will of the elite to join the EU and carry out any reforms that would qualify it for membership. To conclude, the existence of a judicial council as a sole representative of the judicial branch does not guarantee and is not a determinant of the independence of the judiciary.

¹²⁷⁹ James H. Anderson and Cheryl W. Gray, “Transforming Judicial Systems in Europe and Central Asia,” 333.

Financial autonomy. Financing of lower national courts represents the grey area for all the three in-depth cases, and portrays salient loopholes that could permanently undermine the independence of the judiciary. In the case of Estonia and Slovakia, the Ministry of Justice has control over the budgeting process as well as the allocation of funds for all lower courts. Moreover, there are no legislative or constitutional guarantees of minimum levels of funding. Poland's Ministry of Justice also holds control over the budgeting process and the allocation of funds. The budget allocations for next year depend on the previous year's performance. In all three states, the judiciary has almost no influence over budgeting. This lack of control or say over allocation of resources significantly undermines the independence of the judiciary. It is not unusual, however, that the budgeting process and resource allocation for the judiciary fall under the responsibility of the same institution that administrates or co-shares administration of the common courts.¹²⁸⁰ It represents yet an area of concern that numerous international anti-corruption agencies urged states to reform, but because of legal and political disputes, has never been addressed.

Interestingly enough, budgeting has never been mentioned as a tool of manipulation in the Slovak case, but has been mentioned as a serious concern by the Polish interviewees. Hence this criterion, though significant in the potential to harm judicial independence, does not explain how the Estonian and Polish judiciaries are more effective than the Slovak at sanctioning corruption.

Public Prosecutor's Office. A key difference among the three cases in this chapter is the independence and effectiveness of the prosecution system. In Slovakia, the system is the most opaque, non-reformed, and hierarchically organized. In Estonia, on the other

¹²⁸⁰ Open Society Institute, *Judicial Independence*, 46.

hand, selection of prosecutors including chief prosecutor is based on an open and competitive process. For all three cases, prosecution is part of the executive rather than the judiciary. In Slovakia, together with the police, it falls under the subordination of the Ministry of Interior. In this regard, experts and practitioners highlighted the placement of the prosecutor's office under the Ministry of Interior, as well as its non-reformed and closed nature as main obstacles for carrying out serious high-profile investigations of cases of political corruption.

Similar to Slovakia, in the 1990s and early 2000s the Polish judiciary did not have the capacity to sanction effectively corruption. The European Commission country assessment reports attributed much of this lack of functional capacity mainly to the problematic prosecution system.¹²⁸¹ Since its early set up, the Prosecutor's Office played a crucial role in the fight against corruption, even though insufficiently specialized. Together with police authorities, these were the most important institutions to deal with cases of corruption since Poland still had no specialized anti-corruption agencies.¹²⁸² The general set up of the Prosecutor's Office however was problematic from a structural accountability point of view. Prosecutors were hierarchically organized under the Minister of Justice, who also held the position of Prosecutor-General.¹²⁸³ These overlapping positions hinted towards a lack of functional independence of prosecutors who could have also been working to protect the political elite. Moreover, the representatives of the ruling party appointed the Prosecutor-General, fact that highlighted serious concerns about the capacity of the prosecution system to initiate and carry on

¹²⁸¹ Open Society Institute, *Monitoring the EU Accession Process*, 413.

¹²⁸² The Sejm rejected the proposal to create a Central Anti-corruption Office on April 25, 2001.

¹²⁸³ Act on Procuracy from June 20, 1985.

objectively high-level corruption cases.¹²⁸⁴ Moreover, assessment reports, as mentioned in the individual case study, acknowledge that there were not as many cases of corruption brought to court partly because of this double function of the Prosecutor General. During the five-year formal division of the two positions in 2010-2015, there is evidence of more cases of corruption being revealed. Since 2015 the two positions have been merged again. While both in Slovakia and Poland prosecution is very hierarchically organized, in Slovakia prosecution is also considered to be under heavy executive influence. The system is also very much considered politicized in Poland as well. This is not the case for Estonia, as evidence has shown.

In Estonia, the Prosecutor's Office is a government agency in the area of government of the Ministry of Justice. The Prosecutor's Office however is independent upon performance of its duties assigned by the law, and its actions are based on laws and on legal acts adopted on their basis. Unlike in the other two cases, the system has been fully reformed in the early 1990s, and has been working in close cooperation with the security police to investigate difficult cases, process that has been mentioned to have improved the effectiveness and quality of investigations throughout time. Prosecutors are appointed by the Minister of Justice through a competitive selection process, and can be dismissed only at retirement age or as a consequence of disciplinary action. These institutional safeguards together with improved investigative capabilities through trainings and adequate equipment have improved the overall capabilities of prosecutors to investigate difficult cases of corruption as well as the image of the profession. The state of the prosecution system hence predicts well the anti-corruption performance of the

¹²⁸⁴ Open Society Institute, *Monitoring the EU Accession Process*, 413.

three states, and represents the key causal explanation to why so few cases of corruption get on judges' desks in cases with worsening anti-corruption performance.

Specialized units. As evidence shows, specialization is perceived across all three states as a very effective mechanism to deal with complex investigations, especially necessary in cases of political corruption. Polish interviewees have highlighted that the lack of expertise of prosecutors, and police units is oftentimes a salient cause for the lack of effective investigations on cases of corruption. Estonian interviewees, in a similar manner, have mentioned that specialization has improved police and prosecutors' effectiveness in investigating complex cases of corruption. Therefore, there are more cases that are currently revealed as compared to ten years ago. Slovakia is the only case among the three countries that has also a specialized court dealing with serious cases of organized crime and corruption, involving also high-profile politicians. It is considered that the court has helped significantly reduce corruption practices at local level but it has not been put to a test yet when it comes to adjudicating a high-profile case of political corruption. Therefore, it is premature to assess its independence.

Specialized courts, unlike prosecution and police special units on corruption, are not considered a necessity either in Poland or Estonia, as evidence shows. That is mostly because they have non-institutionalized soft specialization where cases are assigned to certain judges depending on their expertise. Estonia hence has a mafia collegium of judges who deal with sophisticated cases of organized crime. Also, judges practice decisional independence, and they are trusted to impartially adjudicate a high-profile case of corruption. Yet, there were no cases of such caliber brought to court in Poland.

To conclude, of the three cases only Slovakia has a specialized court to deal with cases of corruption but it is also the state with the highest increase in corruption levels after accession. Therefore court specialization cannot be considered a key mechanism that would explain changes in patterns of corruption. Specialization of prosecution and police units, in contrast, can be considered salient factors that partly explain a better anti-corruption performance in Estonia than in the other two states. Slovakia's specialized units are not effective however because the overall prosecution system and police force are non-transparent and subject to executive influence despite being based on legal frameworks that guarantee their independence.

Empirical analysis of main judicial reforms

The types and timing of reforms are aspects that differentiate the three countries. In this sense, the country with the most independent judiciary but also lowest levels of corruption, Estonia, has adopted the boldest reforms in the judiciary in the early 1990s. Due to the changes in the court system, all judges had to be reappointed from anew, fact that led to a filtering of justices who were involved to different degrees in political cases during the communist period. It also brought many young law academics, mostly lacking judicial experience but who were professionally trained in a matter of months. Unlike in Estonia, the lustration law in Slovakia is considered to have had no effect as most judges stayed in the system. Moreover, the Meciar government that ruled until 1998 has appointed loyal judges – process facilitated by the recruitment and appointment procedures in force during the early transition period. Judges continued with the

communist era practices and mentality of loyalty to the executive, hence no cases of political corruption were brought to court. The first lustration law in Poland was adopted only in 1997 but arguably had no effect on the early stages of transition for the judiciary. Hence, we do notice a pattern. The state with the most independent judiciary and lowest corruption has mostly filtered its judicial system in the early years of the transition from judges and prosecutors who activated until then. The ones who remained were retrained. This was not the case for Poland, and less so for Slovakia.

Moreover, neither Slovakia nor Poland has adopted as early and bold reforms as Estonia did. In this sense, most of the reforms Slovakia implemented that enhanced the independence of its judiciary came in two later waves. The first one was a direct outcome of the EU accession process that led to the establishment of the Slovak self-governing body of the judiciary, SNCJ, and the creation of the Special Court to deal exclusively with cases of political corruption and organized crime. Reforms, however, were insufficiently tailored to the idiosyncratic political circumstances, and allowed for the institutional framework to be abused after accession both by the judiciary itself, and also by the executive. The loopholes that were most misused have been addressed via changes adopted in a second wave of reforms, 2010-2012, yet most of them were not adequately implemented due to a sudden change of governments. Among more recent and salient reforms adopted is the split of the Chairman of the SNCJ and President of the Supreme Court functions in 2014 that is expected to help avoid future excessive concentration and misuse of judicial powers. In this sense, reforms in Slovakia happened much later than in Estonia.

Similar to Slovakia, no early transition period judicial reforms were implemented in Poland either. Some reforms started to be introduced in the mid-2000s, when its anti-corruption performance has also started to improve. Among the most significant reforms was the division of the positions of Minister of Justice and Prosecutor General in 2010 considered a core institutional underpinning for a more effective control of corruption. This reform was however reversed by the current government in 2015. Generally however, the Polish judicial system has the constitutional tenets that underpin the independence of its judiciary in place but it is the least reformed branch of government. The patchy reform process is due to the lack of vision for judicial reform due to the numerous changes of Ministers of Justice throughout the last two decades. Similar to Slovakia, the judiciary is much politicized but to a lesser degree than in Slovakia.

In light of this background, we do find that the frontrunner in anti-corruption performance did pass judicial reforms earlier in its transition, and these aimed at reducing the potential influence of the executive over the judiciary. Despite sharing administrative and financial competences with the Ministry of Justice, the opinion of the Estonian judiciary in the process of decision-making is seriously considered unlike in the other two cases.

Explaining cases of high-level corruption

Evidence shows that cases of political corruption are rarely investigated across all three states. A frequently brought up reason for this is the highly complex and sophisticated nature of corrupt practices nowadays. Investigations are more time

consuming and resource intensive than before. Moreover, they do not add much to the annual statistics. High-profile indictments, in this context, are a rare occurrence in Estonia and Poland, and have never happened in Slovakia. In Estonia, as evidence shows, cases of political corruption are more frequently revealed in recent years. This is considered to be a by-product of more professional investigations carried out by prosecutors and the police rather than more frequent occurrences. Moreover, specialization of knowledge and skills, as evidence shows, has a salient impact on the capacity to detect such highly complex cases. Not all cases though go in full court, and instead are resolved by plea bargain. The criteria by which a case is decided to go or not before a jury are considered to be somewhat non-transparent in Estonia.

In Poland, high-profile cases of corruption are a more rare occurrence. Though judges are considered to be independent, cases of political corruption do not reach their desks. The broken link in this process is considered the prosecution system that is understaffed, underpaid, and highly politicized, as empirical analysis has shown. Moreover, since 2015 the General Prosecutor is again the Minister of Justice also, and therefore prosecution is fully under the jurisdiction and will of the executive. This concentration of decision-making powers is considered to be damaging the functional independence of prosecutors, and therefore making investigation of cases of political corruption a very rare occurrence.

Slovakia had no high-profile cases of corruption prosecuted at all. Dismissal or resignation from office is the best-case scenario punishment for senior public officials. Yet, as evidence shows, the reason for the lack of such cases brought to court is the ineffective prosecution system. Lacking a competitive recruitment process, and being

heavily politicized, prosecution is unable and unwilling to investigate and prosecute serious breaches of anti-corruption legislation.

The soft sanctioning in cases of actual prosecution is another issue brought in all three states that does not help make corruption a high-cost activity. As findings show, the reasons for providing soft sanctions however are different. In Slovakia if tougher sanctions would be given, cases would get appealed in higher instances. Bringing a case in front of the Supreme Court would be very likely, according to interviewed experts, and culprits would most probably be acquitted considering the politicization of the institution. This is hypothetical expert thinking, evidently, since there were no high-profile cases of corruption brought to the specialized SCC yet. Moreover, due to its special status, the SCC does not need or wish to be in conflict with the Supreme Court.

In the case of Estonia, hard sanctioning is not part of their legal tradition. According to an interviewed expert, “It was a silent common agreement among the people involved in initial reforms who had common beliefs and understanding for the need of focusing on prevention mechanisms in fighting corruption rather than on sanctioning.”¹²⁸⁵ Moreover, according to Mart Rask, former President of the Supreme Court and former Minister of Justice, “most important for a society is not to accept corrupt behavior – sanctioning will not help if there is no common public understanding for the need to morally avoid corruption.”¹²⁸⁶ Hence we do see different drivers for the choice of a soft sanctioning mechanism for corrupt practices, but no clear pattern between frontrunners and laggards emerge.

¹²⁸⁵ Anonymous (expert), interviewed by author, Tallinn, October 2016.

¹²⁸⁶ Rask, Mart (public official), interviewed by author, Tallinn, October 2016.

Conclusion

This chapter has comparatively examined the main institutional aspects that enhance judicial independence, nature and timing of enacted reforms, as well as their capacity to explain variation in anti-corruption performance. The main findings support the second hypothesis put forward in this study, and namely, that *states that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession* (H₂). Not all aspects of judicial independence however carry the same weight as summed up below.

The study finds that all three cases have put in place advanced legal frameworks to safeguard the independence of their judiciaries. The tenets of judicial independence have been developed at different timings, however, and driven by different factors, aspects that partially explain differences in experiencing judicial independence and understanding how it affects anti-corruption performance in each of these states.

The comparative analysis also finds that the institutional arrangements are more oftentimes exploited in Slovakia, the case registering worsening anti-corruption performance. In this context, a common feature to all three cases is that there is no independent judicial body responsible for the administration of courts at the national level. Administration falls under the full or the co-shared responsibility of the Ministry of Justice. Despite having somewhat similar institutional frameworks for court administration, however, all three states experience different levels of judicial independence. Thus it is not the frameworks per se that explain variations in the impact

of the judiciary on corruption in the three cases, it is the misuse of administrative competences as leverage over judges' decisional independence that differentiates Estonia from Poland and Slovakia. The study finds that one of the most commonly abused administrative tools in the hands of the executive is the position of the (vice) presidents of courts, as we attest in the Slovak case, but also in the Polish one to a certain extent. Findings hence show that structural safeguards that shield courts and judges from executive influence in the process of court administration are necessary though not determining factors for enhanced judicial independence, as attested in the case of Slovakia and Poland.

Moreover, findings show a direct relation between the level of politicization of the judiciary and the levels of corruption within a state: the more politicized, meaning in this context less independent the judiciary, the higher the level of corruption in that country. Further, this study finds that differing compensation levels of judges do not explain corruption levels in these three cases. Also, the study concludes that judicial councils do not enhance the independence of the judiciary as such but mostly represent salient institutions representing the body of judges in relation to the other two branches of power. Hence the existence of a judicial council as a sole representative of the judicial branch does not guarantee, and is not a determinant of the independence of the judiciary.

Furthermore, financing of lower national courts represents the grey area for all the three in-depth cases, as findings show, and portrays salient loopholes that could permanently undermine the independence of the judiciary. This criterion, though significant in its potential to harm judicial independence, does not explain why Estonian and Polish judiciaries are more effective than the Slovak at sanctioning corruption.

A key difference between the three cases in this chapter study that reflects also differences in prosecuting political corruption is the independence of prosecutors. The state of the prosecution system predicts well the anti-corruption performance of the three states, and is a key explanatory factor to why so few cases of corruption reach judges' desks. Furthermore, findings show that specialization is seen across all three states as a very effective mechanism to deal with complex investigations, especially necessary in cases of political corruption. Of the three cases only Slovakia has a specialized court to deal with cases of corruption but it is also the state with the highest increase in corruption levels after accession. We do not find evidence for court specialization, in this sense, to represent a key mechanism that explains changes in patterns of corruption. Specialization of prosecution and police units, in contrast, are considered salient factors that partly explain a better anti-corruption performance in Estonia than in the other two states. Slovakia's specialized units are not effective however because the overall prosecution system and police force are non-transparent and subject to executive influence despite the legal safeguards that guarantee their independence.

The timing of reforms, as findings show, is another aspect that partially explains a stronger and more independent judiciary. The study finds that the country with the most independent judiciary but also lowest levels of corruption, Estonia, has adopted the boldest reforms in the judiciary in the early 1990s. Neither Slovakia nor Poland has adopted as early and bold reforms. Slovakia's reforms were adopted mainly during the pre-accession period. These, moreover, were insufficiently tailored to the idiosyncratic context of Slovak elites. This fact allowed for the institutional framework to be abused once the country joined the EU both by the judiciary itself, and also the executive.

Similar to Slovakia, Poland also did not implement judicial reforms in the 1990s. Some reforms started to be introduced only in the mid-2000s, when its anti-corruption performance has also started to improve. The patchy reform process that has continued, however, is due to the lack of vision for judicial reform as a result of the numerous changes of Ministers of Justice throughout the last two decades. Yet unlike Slovakia, Poland had already strong safeguards put in place for the judiciary before the actual transition process has started. These early reforms put a solid basis for the Polish judicial independence, which fully lacked in the case of Slovakia. This fact explains why Poland experiences overall a stronger and more impartial judiciary despite the lack of further reforms in the 1990s. This finding is also consistent with that of the World Bank analysis (2006) that argues that states that implemented reforms in the early 1990s display better control of corruption than states that adopted reforms later in the transition phase.

Finally, the study finds that political corruption cases are rarely investigated across all three states. A frequently brought up reason for the lack or low number of high-profile prosecutions is the high complexity and sophisticated nature of corrupt practices nowadays. In this regard, investigations are very much time consuming and resource intensive. These require specialized knowledge and advanced tools for an effective inquiry and prosecution. They also require the close and consistent collaboration and coordination of efforts between judges, prosecutors, and the police. In the case of Poland and Slovakia these aspects are weaker developed than in Estonia. Cases of corruption also do not enhance significantly the number of annual statistics therefore the motivation to undertake full-blown investigations is not high. Finally, the soft sanctioning process in

cases of actual prosecution is another issue brought in all three states that, as found, does not help make corruption a high-cost activity.

To sum up, comparative to international and western European standards, judiciaries in all three cases have equally advanced legal frameworks put in place that ensure their institutional independence. These differ however in their degree of decisional independence as a result of different levels of influence of the executive on the judiciary. The Slovak judiciary has always been characterized as highly centralized and heavily influenced by excessive executive involvement. Slovakia's executive still exerts the heaviest influence on judges, prosecutors, and the court system as a whole. According to Freedom House, this concentration of powers in the executive increases opportunities to influence the judicial process especially in cases of high-profile investigations.¹²⁸⁷ Main tools through which such influence is exerted are interference with the recruitment procedures of judges and prosecutors, disciplinary proceedings, and the hierarchical nature of organization of the prosecution system. The usage of these 'strings' encourages judiciary's loyalty rather than impartiality affecting hence their decisional independence.

Polish judges, on the other hand, are generally considered independent though the judicial system as a branch of government is under the heavy influence of the Ministry of Justice via the misuse of administrative and budgetary strings, in particular. Moreover, by having the Minister of Justice exert also the function of General Prosecutor, this concentration of power debilitates the workings of the prosecution system, especially important in cases of corruption that involve political elites. On the contrary, in the case of Estonia, there is no evidence of excessive executive interference in any decision-making processes related to the judiciary as a branch of government or decisional

¹²⁸⁷ Freedom House, *Nations in Transit Report 2010*.

independence of judges. These patterns in independence of the judiciary follow closely the patterns in anti-corruption performance in each of the three cases, and explain the noticed variation.

15

*Moving Beyond the Three Cases:**Suggestive Evidence for the Generalizability of the Theory*

Consistent with a *nested analysis model* case selection design, Estonia, Poland, and Slovakia were selected as typical cases. Considering that findings are consistent with the theory in these cases, then, the causal mechanisms should be generalizable for the rest of the CEE region as well. The selected three states do not represent extreme cases, and therefore findings should hold across the remaining cases. While this particular case selection design facilitated theory testing in a comparative case study approach, in this chapter I address potential external validity concerns by briefly tracing the identified causal mechanisms in the remaining cases.

Freedom House and European Commission country assessment reports highlight that prosecution of political corruption is generally a rare occurrence in most of the cases, especially in the early 1990s. This was particularly the case in the Czech Republic, Latvia, Lithuania, Poland, Slovakia and Hungary. Even in the two countries registering the highest levels of control of corruption, in the region, indictments of senior politicians represented unique events. The Open Society Institute's pre-accession assessment report highlights, in this regard, that,

“in no candidate country have courts and prosecution offices yet proved to be sufficiently independent or powerful to investigate or prosecute on the basis of suspicions concerning politicians or parties where this does not suit the political establishment.”¹²⁸⁸

¹²⁸⁸ Open Society Institute, *Monitoring the EU Accession Process*, 66.

After accession, however, the number of prosecutions has increased in some countries (particularly in Lithuania and Latvia), but otherwise high-ranked prosecutions are still rare. In this sense, most of the states suffer from ineffective prosecution despite efforts to implement salient reforms in this sector (exceptions are Estonia and Lithuania). Lithuania is one of the few cases where prosecution mechanisms have improved after accession as a result of implemented reforms. The level of anti-corruption performance has also improved steadily after accession. The Czech institutional framework responsible for regulating prosecution, on the contrary, continues to be vulnerable to political pressures that indirectly influence investigations and prosecution despite significant reforms. It is the country with one of the worst anti-corruption performance in the region.

Alongside with Poland and Slovakia, Hungary, Latvia, and Slovenia's prosecution mechanisms also suffer from political pressure mostly due to their institutional designs. Slovenia, in this respect, to date has no clear selection and promotion criteria for the prosecutors. Their terms of office are at the discretion of the Ministry of Justice, however, rather than of the Ministry of Interior. In this same context, the Latvian judiciary has always been very vulnerable to undue influence on behalf of the Ministry of Justice. A recent reform that introduced open voting in parliament for appointment of judges is expected to help against highly politicized appointment and dismissal procedures. Hungary's independence of judicial and control institutions has been consistently undermined by alleged political ties of top-rank officials within control institutions during more recent years.

Moreover, evidence shows that unclear division of responsibilities in criminal proceedings (Slovenian case) or pre-trial investigations (Lithuanian case) between law enforcement agencies such as police, prosecution and judges is the case not only for Poland and Slovakia. This unclear locus of responsibility usually leads to insufficient enforcement and institutional rivalry, and is consistent with the findings in the existing literature.¹²⁸⁹ Further we assess the role of independence of prosecution and the clarity of responsibility in the remaining five cases.

Latvia

The judiciary in Latvia was considered one of the main foci of corruption before accession. Because of the lack of an independent judicial system able to hold accountable political elites, the state was categorized as captured by private interests until the late 1990s. Moreover, the 2001 GRECO evaluation report mentioned that the process of investigating and prosecuting corruption lacked institutional coordination and effectiveness.¹²⁹⁰ In this sense, despite an active anti-corruption agency, the KNAB, a dependent judiciary significantly hampered its efforts at prosecuting senior officials. Evidence shows that few cases of corruption were prosecuted due to the courts' reluctance to address these cases, as well as the institutional rivalry that existed among law enforcement agencies.¹²⁹¹ Under *acquis* conditionality¹²⁹², Latvian authorities

¹²⁸⁹ Tavits, "Clarity of responsibility and corruption."

¹²⁹⁰ GRECO, *Evaluation Report on Latvia* (9th Plenary Meeting, Strasbourg, 2002) <<http://www.greco.coe.int>> (accessed on June 22, 2016).

¹²⁹¹ Freedom House, *Nations in Transit Report 2005*.

¹²⁹² Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe," *Journal of European Public Policy*, 11.4 (2004), 661-679.

invested heavily in the training of prosecutors, police officers as well as in improving transparency of the judicial system. These reforms have started to show results only much later, after accession, when some of the most powerful oligarchs including mayors, and senior court judges have been prosecuted and jailed¹²⁹³, fact that sent a strong shock wave across society that “corruption is no longer a risk-free activity.”¹²⁹⁴

In this regard, starting with 2012, the government also passed legislation fostering transparency and accountability in several key areas that helped strengthen the independence of the judicial system. It introduced open voting in parliament for appointments of judges, the Prosecutor General, and the anti-corruption KNAB director. In 2013 the Parliament also amended the Constitution to mandate an open vote on the appointment of the Constitutional Court judges. These reforms explain why improvement in anti-corruption performance started being noticed in the 2010s, and not earlier. Hence the Latvian case confirms the theory in the sense that actual improvements in anti-corruption performance started being felt only after reforms that strengthened the judiciary’s capacity to sanction corruption have been implemented.

Lithuania

To date, both domestic and international organizations still qualify corruption as a systemic problem for Lithuania and one of the country’s most salient concerns.¹²⁹⁵ Poor law enforcement is considered one of the factors that hampers better control of

¹²⁹³ Freedom House, *Nations in Transit 2006-2008 Reports*.

¹²⁹⁴ Freedom House, *Nations in Transit Report 2007*.

¹²⁹⁵ Freedom House, *Nations in Transit Report 2005*.

corruption.¹²⁹⁶ Also, the existing mechanisms for effective investigation and prosecution of corrupt cases among elected and appointed officials are “applied in a formal or fragmented manner.”¹²⁹⁷ Yet, despite a comparatively low score, its anti-corruption performance is gradually improving in recent years, and therefore it represents a case that might elucidate an alternative path to better anti-corruption performance. Here I focus on clarifying the role of the judicial system.

Before accession, neither prosecution nor police authorities were acting as effective deterrents of corruption. Judges, in this respect, highlighted the poor quality of police corruption investigations.¹²⁹⁸ GRECO more generally highlighted the “lack of clarity in the division of functions between police investigators and prosecutors during pre-trial investigations.”¹²⁹⁹ Because of inadequate measures of corruption but also unclear division of responsibilities between prosecution and police, fighting corruption was a difficult endeavor despite overall improvement in anti-corruption performance. Moreover, evidence shows traces of politicization of law enforcement authorities more generally. In this regard, selective case investigations by the anti-corruption STT sparked debates about “the involvement of law enforcement in political battles.”¹³⁰⁰

In 2004, however, the Constitutional Court upheld several important rulings that strengthened the country’s anti-corruption institutions. The court ruled that “parliamentary mandates are incompatible with other professional commitments or business ownership and that municipal council mandates are incompatible with executive

¹²⁹⁶ Freedom House, *Nations in Transit 2003-2004 Reports*; Open Society Institute, *Monitoring the EU Accession Process*.

¹²⁹⁷ Freedom House, *Nations in Transit Report 2005*.

¹²⁹⁸ GRECO, *Evaluation Report on Lithuania* (8th Plenary Meeting, Strasbourg, 2002), 17.

¹²⁹⁹ GRECO, *Evaluation Report on Lithuania*, 16.

¹³⁰⁰ Freedom House, *Nations in Transit Report 2005*.

positions in municipally owned entities.”¹³⁰¹ Moreover, Lithuania’s improving anti-corruption score is a reflection of the advanced anti-corruption framework that it adopted before accession and starting 2009. Reforms addressed some of the most stringent ‘loopholes’ that allowed corrupt practices to flourish. Starting 2009, salient remaining institutional weaknesses have been addressed by a pro-reform coalition. Reforms particularly addressed improving monitoring and oversight mechanisms. The Special Investigation Bureau (STT) in this regard became the only truly independent institution in the CEE region to investigate corruption in the public sector.

STT reviews and recommendations led to two presidential vetoes: one, to a proposed amendment to the Law on Public Procurement to exempt political parties from rules on public procurement, and second, to a proposed forest law that lacked appropriate measures to prevent abuse of authority.¹³⁰² In this regard, STT recommendations are generally well accepted and implemented.¹³⁰³ More generally, as a result of more active investigative and law enforcement activity after 2009, the follow-through on high profile cases has steadily increased starting 2009 and has been noticed in subsequent assessment reports.¹³⁰⁴ These later improvements explain the Lithuania’s slow but steady improvement of its anti-corruption performance.

To conclude, the alternative path that Lithuania elucidates is partly consistent with the proposed theory. An increased active role on behalf of an independent control and oversight mechanism, the anti-corruption STT agency, explains the country’s improving control of corruption. It is not the mechanism hypothesized in this study, but it falls under

¹³⁰¹ Freedom House, *Nations in Transit Report 2005*.

¹³⁰² European Commission, *EU Anti-Corruption Report 2014 - Chapter on Lithuania*.

¹³⁰³ Freedom House, *Nations in Transit Report 2007*.

¹³⁰⁴ Freedom House, *Nations in Transit 2010-2014 Reports*.

the larger category of monitoring and oversight mechanisms that I argue differentiate the frontrunners from the backsliders after accession. Considering the latest reforms in the judiciary and prosecution, as well as the constantly improving control of corruption in Lithuania, this case might become a leader in anti-corruption along with at least Estonia.

Slovenia

Slovenia, as a case placed in the middle group according to its anti-corruption performance is not fully fitting the proposed theory, according to the longitudinal within-case trends it displays. It did establish an independent judiciary in the early 1990s but corruption is constantly on the increase, according to World Governance Indicators, at least. Overall however, its anti-corruption performance is currently ranked second best in the CEE region after Estonia. To explain this relative decline, we examine institutional developments of the law enforcement framework of the case.

As evidence shows, a deficient investigation process on behalf of the prosecution hampers high-profile cases of corruption to reach judges' desks. Both the police and prosecutors are two institutions responsible for the investigation of corruption cases. The police, in particular, was significantly restructured in 2000. Special anti-corruption divisions have been set up to facilitate investigations and were given broad responsibilities.¹³⁰⁵ Both institutions, however, are considered to have been ineffective, sensitive to political pressure, and suffering from a lack of independence, particularly in high-level cases of corruption, as assessed in a pre-accession report.¹³⁰⁶ The 2000

¹³⁰⁵ Open Society Institute, *Monitoring the EU Accession Process*, 590.

¹³⁰⁶ Open Society Institute, *Monitoring the EU Accession Process*, 590; GRECO, *Evaluation Report*, 12.

GRECO Report, in this regard, also criticized the “unclear division of responsibilities between the police, prosecutors, and investigating judges: cooperation in criminal proceedings appears to depend mostly on good personal contacts between the police and prosecutors.”¹³⁰⁷ GRECO findings also suggested that there are no clear selection and promotion criteria for the prosecutors who find themselves at the full discretion of the Ministry of Justice.

The EU Anti-Corruption Report highlights the inefficiency of anti-corruption institutions if strong and independent law enforcement authorities do not back them up. It also mentions Slovenia to be representative of this process. According to the report, it is the CPC's “guarantees of stability and independence” that ensure that the institution pursues its investigative and oversight duties successfully and without undue pressure.¹³⁰⁸ Concomitantly, the report highlights that the anti-corruption CPC agency cannot be impactful by itself. Internal and external control and oversight mechanisms, the police, prosecution, and the judiciary need to follow up on its findings. This is the case since criminal investigation powers lie with the criminal police, the National Bureau of Investigations, and the prosecutors’ office. The Commission’s comment hence comes as a reaction to the 2013 resignation of CPC’s management in protest against the inadequate external support and lack of effort of authorities to investigate the corruption cases and concerns identified by the CPC.¹³⁰⁹

In 2015, in this context, the Slovenian judiciary discredited itself due to “the collapse of key high-profile cases concerning high-level corruption and money

¹³⁰⁷ GRECO, *Evaluation Report* cited in *Monitoring the EU Accession Process*, Open Society Institute, 590.

¹³⁰⁸ European Commission, *2014 Anti-Corruption Report*, 10.

¹³⁰⁹ European Commission, *2014 Anti-Corruption Report*, 10.

laundering after years of prosecution.”¹³¹⁰ The Constitutional Court ruled on the Patria case convictions by repealing the previously issued guilty verdicts against Janez Janša and the two co-defendants. Some months later, according to Freedom House, “the District Court of Ljubljana decided to drop all criminal charges against the three defendants, effectively ending the Patria case without any convictions.”¹³¹¹

In this sense, despite an effective anti-corruption agency, and an independent judiciary, the process of prosecution of political corruption stops at prosecution level, and more recently proven, at the Constitutional Court level as well. Prosecutors, as evidence shows, are politicized and lack full decisional independence. This causal mechanism has been identified in the case of Poland as well, which is a borderline case between frontrunners and the middle group in anti-corruption performance. Slovenia, to a certain extent is also a borderline case since it scores a decline in its overall anti-corruption performance over time, but generally, is performing better than most cases. Hence, the Slovenian case mostly confirms the theory put forward as well.

Czech Republic

The findings from the Slovak case are consistent with the developments in the Czech Republic. Prosecution of large-scale corruption cases has always been a rare occurrence in the Czech Republic.¹³¹² Judicial, including prosecution bodies have been, as a rule, deficient at containing corrupt practices among the higher echelons of power.

¹³¹⁰ Freedom House, *Nations in Transit Report 2016*.

¹³¹¹ Freedom House, *Nations in Transit Report 2016*.

¹³¹² Transparency International, <http://www.transparency.cz/analyza-soudnich-rozhodnuti-vydanych-letech-2010-2012-vecech/> (accessed on 15 November 2016).

The EU has criticized the lack of reforms in the realm of corruption prosecution, and as a result, the government approved the National Program for the Fight against Corruption in 1999 that aimed at making prosecution bodies more effective. The plans to set up special teams of prosecutors to oversee investigations of serious economic crimes have not been implemented however before accession.¹³¹³ Generally, the reform of prosecution has been ineffective in practice.¹³¹⁴ Concomitantly, the incidence of corruption and the gravity of cases among public officials were believed to be growing while very few actual prosecutions took place.¹³¹⁵

After accession, most of the proposed reforms have failed, as there was no more acquis conditionality and subsequently no more political will to enact change. The creation of a special team of prosecutors that would deal with the most serious cases of corruption, or the amendment of the criminal code that would distinguish lobbying from corruption have not materialized after accession either.¹³¹⁶ The existing prosecution mechanisms, according to the OECD Working Group on Bribery, face political pressures that “may indirectly influence investigations and prosecutions.”¹³¹⁷ These undue influences are reflected in the institutional framework of prosecution powers. In this regard, the head of the Supreme Public Prosecutor's Office can be dismissed without providing any reasoning at the proposal of the Minister of Justice.¹³¹⁸

Evidence shows that only in 2012, the government reached an agreement to

¹³¹³ Open Society Institute, *Monitoring the EU Accession Process*.

¹³¹⁴ Freedom House, *Nations in Transit Report 2004*.

¹³¹⁵ Czech Ministry of Interior, *Report on Corruption in the Czech Republic and on the Following of the Schedule of the Government's Program of Fight against Corruption*, 2001, 5.

¹³¹⁶ Freedom House, *Nations in Transit Report 2009*.

¹³¹⁷ OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention on the Czech Republic*, 2013, 30, <http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf> (accessed on 30 March 2017).

¹³¹⁸ http://www.euro-justice.com/member_states/czech_republic/country_report/1713/; Act 283/1993 on Public Prosecutor's Office, section 9.

restructure public prosecution. It aimed at reducing the number of coordination issues by centralizing prosecution authority. The number of administrative layers was hence reduced. It is not clear yet whether this reform will reduce the politicization of prosecution. Yet, the centralization of decision-making powers, as previous Slovak and Polish cases have shown, might not have the desired effect.

In this regard, TI highlighted concerns regarding consistent political pressure on public officials, and insufficient investigation and prosecution of high-rank politicians and officials. Moreover, in the 2011 National Integrity Study, TI also indicates that prosecution, state administration, and police forces remain to be “the weakest pillars in the system” to address corruption. The EU Anti-Corruption Report hence recommends adoption of reforms to enhance merit-based recruitment in the judicial system, stop arbitrary dismissals by including safeguards against political interference, and strengthen independence of prosecutors.¹³¹⁹ To conclude, excessive politicization of the judicial branch, and prosecution explain why prosecution is a rare occurrence in the Czech Republic despite worsening corruption levels. The findings from the Slovak case hence hold also for the Czech one.

Hungary

Prima facie, Hungary is a case disconfirming the proposed theory. It has established an independent judiciary before accession, but it also registers the highest change in anti-corruption performance after accession, which above all, is negative (see

¹³¹⁹ European Commission, *EU Anti-Corruption Report 2014 - Chapter on Czech Republic*, 11.

Figure E.4). In this sense, it does not fit the pattern displayed by the other backsliders – politicized and unreformed judiciary and prosecution before accession.

Hungary started out with an overall advanced democratic institutional design and it had the reputation of one of the least corrupt post-communist countries in the CEE region. Institutional ‘loopholes’ are however numerous, and in the absence of strong checks, these began to be exploited particularly after accession. Political appointments however were not an infrequent occurrence. For instance, prosecution was considered to have become progressively vulnerable to executive involvement. One example is the appointment of Peter Polt in 2000, as Prosecutor General. He was a former FIDESZ-MPP candidate in the 1994 general elections. After his appointment, the Prosecutor’s Office has issued some controversial decisions on cases of corruption that involved several government members.¹³²⁰

Since high-level corruption and organized crime cases fall under the jurisdiction of the Central Investigation Department of the Office of the Prosecutor, independence of the prosecution is key to holding corrupt behavior under scrutiny. Moreover, evidence shows that even though there are separate units dealing with corruption within particular agencies, there is no independent body dealing solely with corruption and that creates cooperation problems among the existing institutions.¹³²¹ This pattern is noticed also in other backsliding cases. Immediately after accession, OECD recommended on this matter to strengthen control and enforcement mechanisms, and namely: to allocate necessary resources for a more effective functioning of the Office of the Prosecutor, increase

¹³²⁰ Open Society Institute, *Monitoring the EU Accession Process*.

¹³²¹ Open Society Institute, *Monitoring the EU Accession Process*.

transparency of prosecution, and enable auditors to report cases of corruption to the appropriate law enforcement authorities.¹³²²

Under the current Orban government, evidence shows that both the judiciary and the prosecution are incapacitated in terms of exercising their constitutional tasks because of their politicization. This lack of oversight and monitoring over policy-makers and bureaucrats has led to numerous instances of abuse of power, and to a subsequent worsening of anti-corruption performance. Hence, we conclude that the mechanism at work is in fact similar to the other backsliders previously discussed. A non-functioning judiciary and prosecution lead to worsening control of corruption.

To conclude, while data and measurement limitations impede conclusive findings, the results of the qualitative analysis are consistent with the tested theory. Confidence in theory's generalizability is hence much increased. We find support that the findings from the three in-depth cases are generalizable to the remaining five cases in this study. In this sense, states' judicial arrangements explain variation in anti-corruption performance. States still suffer from weak judicial, including prosecution mechanisms, but to different degrees. Evidence shows that the extent of this weakness is determined by how many points of entry there are for undue influences to be exerted on enforcement institutions, the analytical or financial dependence of agencies responsible for identification, investigation and prosecution of corrupt cases, as well as the strength of cooperation and coordination of activities among them. In turn, the strength and independence of judicial arrangements explain variation in anti-corruption performance.

¹³²² Freedom House, *Nations in Transit Report 2007*.

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Concluding Remarks

This study has sought to make a scholarly contribution to the study of political corruption in the new Central and East European democracies. It found empirical support for the proposed theoretical argument that, the design of anti-corruption institutions and the independence of the judiciary before accession explain variation in anti-corruption performance after accession. First, the empirical analysis has showcased that to different degrees all states experience idiosyncratic institutional vulnerabilities – ‘loopholes’ – that rent-seeking legislative and executive office holders may seek to abuse. Whether or not public officials exploit such institutional ‘loopholes’, as evidence has shown, depends on the strength of existing checks on power.

Further, this study found empirical support for its second theoretical proposition that strong domestic control and oversight mechanisms are crucial for stable or improving anti-corruption performance when internal checks within the executive and the legislature are poorly functioning. Findings confirm the existing correlation in the literature – the key check on political power, especially in the context of young democracies, is a strong and independent judiciary that can back up existing anti-corruption institutions by ensuring that institutional ‘loopholes’ are not abused, and the rule of law is respected. Exploitation of institutional weaknesses was not often the case in the period preceding EU accession because of the “watchdog” role the EU had. Coupled with anti-corruption legislation that was adopted on the eve of EU accession, most states improved their anti-

corruption performance, in fact, hence the positive convergence towards more effective control of corruption. In parallel, the levels of perceived corruption remained very high overall across most cases.

After accession however, EU's "watchdog" role had to be replaced by domestic control and oversight mechanisms. I demonstrated that states that managed to develop strong judiciaries (including prosecution) to fill this "watchdog" role of the EU experience stable or improving anti-corruption performance after accession. The ones who did not reform this key check on political power, experience heavily politicized judiciaries and prosecution systems, and consequently backslide on previous anti-corruption achievements. This study finally demonstrated that different states ensure a strong independent judiciary via different combinations of judicial institutions. One thing that judiciaries have in common in anti-corruption frontrunners, however, is their insulation from excessive executive dominance. This relates to the prosecution system as well. This aspect of judicial independence is key in differentiating frontrunners from laggards.

This concluding section reiterates the main findings of the dissertation, and lays out the implications of this empirical analysis for the study of corruption and institutional reform, as well as the avenues for further research.

A. Key findings

This dissertation assessed the different paths in anti-corruption performance the new EU member states undertook after they joined the Union. Estonia and Poland until

2014, have been constantly improving their control of corruption since 2004. They are the frontrunners in anti-corruption performance. Latvia and Lithuania illustrate stable control of corruption. Slovenia, despite a downtrend after accession, is still the second best performing case in the region. These three cases make the middle group states. Finally, the Czech Republic, Hungary, and Slovakia are the backsliders. They display worsening scores of anti-corruption performance after accession. This dissertation developed a theoretical argument to explain this intraregional variation of these new EU member states.

The study has shed light on the role of the design of anti-corruption institutions and judicial arrangements in explaining variation in anti-corruption performance. It has done so by developing and empirically validating two hypotheses. More specifically, I theorized that *states that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively after accession (H_1)*. Internal checks on power stand out as the weakest anti-corruption institutions in the cases of the Czech Republic, Hungary, and Slovakia. They explain why these states backslide on their anti-corruption performance. These are however problematic to a certain degree for the other cases as well. Whereas anti-corruption institutions are necessary, they are not sufficient in explaining anti-corruption state performance. They need to be accompanied by an independent, non-politicized judiciary that can back up anti-corruption institutions when their weaknesses are exploited. In this regard, I empirically tested a second hypothesis – *states that have developed institutional arrangements that enhance the independence of judiciaries before accession are more likely to improve or stabilize their anti-corruption performance after accession (H_2)*. This study validated this hypothesis

via the in-depth analysis of three cases: Estonia, Poland, and Slovakia. A nested model analysis as well as discussion of results' external validity ensured that findings predict the remaining cases as well.

A.1. Hypothesis H₁

The empirical results from the comparative case study analysis of the eight cases in this dissertation provide strong evidence in support of hypothesis H₁. Findings revealed the main institutions that differentiate frontrunners from backsliders. The study found evidence, in this regard, that supports the claim that *the frontrunners* in anti-corruption performance have established strong institutions to prevent corruption in the 1990s and before their EU entry. This has been done by tracing the link between particular institutional weaknesses and particular areas where corruption remained (as opposed to areas of institutional strength corresponding to areas where corruption was largely eliminated).

The strength of institutions in frontrunners' group is characterized by decreasing number of legal loopholes that allow discretionary decision-making power to be abused. Stronger institutions, as a result, have decreased the level of corruption in numerous sectors that were affected by the phenomenon before accession. Evidence shows that the few foci of corruption that remained after accession are related to the deficient internal checks that were poorly reformed before EU accession. Loopholes are particularly evident in the regulations on political party financing. Poland has somewhat weaker internal checks in this respect than Estonia. Nevertheless, to date, corruption does not

represent a salient problem for either state. Both still do experience a small number of areas of corruption after accession that need further attention. Estonia, in this regard, still experiences corruption in party financing and local public administration. Poland struggles with corruption in party financing, public procurement, and state-owned companies.

For the *middle group*, we found evidence that showed that all three cases, Latvia, Lithuania, and Slovenia developed relatively strong institutional designs by addressing existing ‘loopholes’ in their anti-corruption mechanisms before accession. As a result of salient reforms, especially before they joined the EU, all cases (inconclusive evidence for Slovenia) experience fewer foci of corruption after accession than they did before accession. Yet, unlike the frontrunners, they display more weaknesses that correspond to more areas that are still affected by corruption after accession.

Latvia currently experiences corruption mainly in the higher echelons of public administration and the legislative process. Lithuania still struggles with corruption namely in local public administration, the legislative process, law enforcement, and public procurement. Slovenia’s foci of corruption are the legislature, party finance, law enforcement, local administration, and state-owned companies. In contrast to the frontrunners, corruption still represents a salient problem for all three cases in this group.

Empirical analysis showed that these remaining foci of corruption are explained by deficient internal monitoring checks that have been poorly or not at all reformed before EU entry. All three cases however have established strong anti-corruption agencies before joining the EU. Particularly in the second half of the 2000s these started delivering effective results. Yet despite the proliferation of institutions meant to fight

corruption in these countries, and that correspond to the most advanced international standards, the internal checks are still quite weak until today.

For the *backsliders group*, evidence showed that all three states established comparatively advanced institutional anti-corruption designs but which have numerous and significant ‘loopholes’ still embedded in them. Corruption represented a salient problem in the 1990s for two of the three cases – the Czech Republic and Slovakia. It constitutes a severe problem for all three countries today. Hungary, in this regard, was a puzzling case at a first glance since it is a country with a very low level of corruption in the early 1990s according to international rankings. A close analysis of the anti-corruption mechanisms it had set up in the 1990s revealed serious weaknesses especially in terms of internal checks on power. While overall the adopted institutions corresponded more generally to international standards, they embedded numerous loopholes. Despite addressing institutional shortcomings in several areas before EU accession, the capacity of the Hungarian internal control mechanisms and law enforcement agencies was not strengthened to address corrupt practices in the public sector before accession.

Evidence proved that Hungary’s case is not that puzzling after all. The anti-corruption backslide of Hungary is very much embedded in its more general democratic backsliding that is related to actions undertaken since Orban’s Fidesz party came to power. Both internal and external checks on power that were already quite weak became even more politicized under Orban, a fact that severely further undercut their capacity to restrain the executive from abusing power. Hence today, its checks on power are incapacitated equally as much as those of Slovakia and the Czech Republic.

Furthermore, empirical analysis proved that all backsliders have not reduced the areas where corruption prevailed before accession. Czech Republic, in this regard, experiences corruption mainly in public administration, the legislature, prosecution, party financing and public procurement. Hungary struggles with corruption namely in public administration, law enforcement and prosecution, party financing and public procurement. Slovakia, the worst performer, is challenged by corrupt practices in public administration, legislature, judiciary, law enforcement and prosecution, as well as party financing and public procurement. Moreover, empirics show a common trend in all three cases – that of the existence of alarmingly close ties between political and economic elites.

Finally, evidence shows that the current foci of corruption are a result of the deficient internal checks on power that were poorly or not reformed at all before EU entry. Despite the proliferation of institutions in these countries meant to fight corruption, and that correspond to most advanced international standards, there are no effective internal checks currently that would be able to contain corrupt practices.

To conclude on the findings for the first hypothesis, in light of the institutional assessment, we found support that states that adopted designs with fewer institutional loopholes before accession are more likely to control corruption effectively later. Moreover, weak internal checks and supervisory mechanisms within public administration institutions and the legislature are a most common characteristic for the backsliders, in particular, but they represent a more regional pattern as well. Overall, findings suggest the persistence of corruption to be a consequence of weak internal checks that are unable to hold political elites accountable, fact that makes policy-makers

and bureaucrats highly susceptible to corrupt behavior. This analysis nuanced the scholarly understanding of the institutional heterogeneity of anti-corruption designs.

A.2. Hypothesis H_2

By validating Hypothesis H_1 , the first part of this dissertation has shown that to be a strong anti-corruption performer, it is important to have (A) anti-corruption institutions with relatively few loopholes. The evidence brought traced the link between particular institutional weaknesses and particular areas where corruption remained (as opposed to areas of institutional strength corresponding to areas where corruption was largely eliminated). Strong institutions are not sufficient, however, as remaining loopholes can be exploited in the absence of checks on powers. This is particularly the case after accession when the EU pressure has faded away with these countries joining the Union. The second part of this dissertation demonstrated via the validation of Hypothesis H_2 that anti-corruption institutions work better in tandem with independent judiciaries that back them up when officials abuse public office. As a result of a strong tandem where the role of the EU monitoring is replaced by independent judiciaries, anti-corruption performance does not backslide after accession.

The empirical results from the nested model analysis showed that Estonia, Poland, and Slovakia are the most representative cases for the regional trends, and encompass maximum variation both on the dependent and independent variables. Chapters 10 through 14 have examined hence the main institutional aspects that enhance judicial independence, nature and timing of enacted reforms, as well as the mechanisms by which

they explain variation in anti-corruption performance. Findings provided strong evidence in support of H₂. The empirical analysis revealed the causal mechanisms that enhance judicial independence and consequently explain better ACP for the frontrunners.

The study found a causal relation between the level of politicization of the judiciary and the levels of corruption within a state: the more politicized the judiciary, the higher the level of corruption in that country. In this context, we find support that the degree of misuse of administrative competences as leverage over judges' and prosecutors' decisional independence represents a key difference among the three groups. One of the most commonly abused administrative tools in the hands of the executive is the position of the (vice) presidents of courts, as we attest in the Slovak case, but also in the Polish one to a certain extent. Findings also reveal that structural safeguards to shield courts and judges from executive influence in the process of court administration are necessary though not sufficient to explain enhanced judicial independence.

Another key difference between the frontrunners and backsliders is the independence of prosecutors. The state of the prosecution system strongly predicts anti-corruption performance, and is a key factor in explaining why so few cases of corruption reach judges' desks. In this sense, the lack of politicization of judges and prosecutors is what underpins improving anti-corruption performance.

Furthermore, findings show that specialization is seen across all three states as a very effective mechanism to deal with complex investigations, especially necessary in cases of political corruption. The study did not find however evidence for court specialization to represent a key mechanism that explains changes in patterns of corruption. Specialization of prosecution and police units, in contrast, were found salient

factors that partly explain a better anti-corruption performance in Estonia than in the other two states. Slovakia's specialized units are not effective however because the overall prosecution system and police force are non-transparent and subject to executive influence despite the legal safeguards that guarantee their independence.

The timing of reforms, as findings show, is another aspect that partially explains a stronger and more independent judiciary. The study found that the country with the most independent judiciary but also lowest levels of corruption, Estonia, has adopted the boldest reforms in the judiciary in the early 1990s. Neither Slovakia nor Poland has adopted as early and bold reforms. Slovakia's reforms were adopted mainly during the pre-accession period. These, moreover, were insufficiently tailored to the idiosyncratic context of Slovak elites. This fact allowed for the institutional framework to be abused once the country joined the EU both by the judiciary itself, and also the executive.

Poland had already strong safeguards put in place for the judiciary before the actual transition process has started. These early reforms formed a solid basis for the Polish judicial independence, which fully lacked in the case of Slovakia. This fact explains why Poland experiences overall a stronger and more impartial judiciary despite the lack of further reforms in the 1990s. This finding is also consistent with that of the World Bank analysis (2006) that argues that states that implemented reforms in the early 1990s display better control of corruption than states that adopted reforms later in the transition phase.

Finally, the study finds that political corruption cases are rarely investigated across all three states. Evidence proved that the infrequent high-profile prosecutions are a result of highly complex and sophisticated corrupt practices nowadays. In this regard,

investigations are very much time consuming and resource intensive. These require specialized knowledge and advanced tools for an effective inquiry and prosecution. They also require the close and consistent collaboration and coordination of efforts between judges, prosecutors, and the police. These requirements are met in the countries that have improving anti-corruption performance, but not in the others.

In sum, comparative to western European standards, judiciaries across all groups have equally advanced legal frameworks put in place that ensure their structural independence. States differ however in the degree of decisional independence of judges and prosecutors as a result of different levels of influence on behalf of the executive. Main executive strings are interference with the recruitment procedures of judges and prosecutors, disciplinary proceedings, and the hierarchical nature of organization of the prosecution system. The usage of these strings encourages judiciary's loyalty rather than impartiality affecting hence their decisional independence. These are more acute practices in the backsliding states than in the middle group ones.

Further, I discuss the implications of these findings for the study of political corruption and institutional reform in new democracies as well as the avenues for further research.

B. Implications for the Study of Political Corruption and Institutional Reform

This study contributes to the literature on political corruption and institutional reform. First, the findings help acknowledging that in the last two decades political corruption has undergone a qualitative transformation from more simple corrupt practices

to sophisticated schemes of corrupt exchanges. Whereas traditional forms of corruption do not require highly advanced tools of investigation, schemes of money laundering and trade of influence do require specialized knowledge, tools, and regulations to be detected, investigated, and prosecuted. One implication in this regard is the need to theoretically reassess existing indicators of corruption or potentially develop new ones for more precise measures.

Second, the findings of this study are consistent with the institutional school of thought. It confirms the generally accepted argument that weak institutions breed corruption.¹³²³ The novelty that this study brings is the need to study in the new EU democracies the weaknesses that institutions might carry along depending on how they have been set up or reformed. In this sense, states might have anti-corruption institutions that correspond to most international standards but they could be weak in preventing corrupt practices. This study hence sheds light on the necessity to further study the weaknesses that “parchment” institutions – laws, constitutions and other formal rules of the game¹³²⁴ – embed to explain why seemingly advanced democracies experience institutional backsliding.

Third, empirical findings are consistent with the literature findings. The study finds support for Rose-Ackerman’s neo-institutional argument that a lower risk to be prosecuted or lose seat in office incentivizes public officials to engage in corrupt

¹³²³ Samuel Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968); Paul Heywood, “Political Corruption: Problems and Perspectives,” *Political Studies* 45, no. 3 (1997): 417-435; Rasma Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (London: M. E. Sharpe, 2005); World Bank, *Anticorruption in transition 3. Who is succeeding... and why?* (Washington DC: World Bank, 2006).

¹³²⁴ Carey, 2000, 735.

exchanges.¹³²⁵ In this sense, findings confirmed that weaker institutional checks on power worsen states' anti-corruption performance.¹³²⁶ Furthermore, findings confirm arguments by Rose-Ackerman (1978; 2001), Klitgaard (1988), and Mungiu-Pippidi (2015) who claim that limiting the potential misuse of discretion by designing and adopting clearly balanced rules for policy makers and civil servants that limit the space for maneuver is necessary to control corruption.¹³²⁷

Moreover, findings confirm the key role of an independent judiciary as a legal deterrent imposed on power.¹³²⁸ In line with Della Porta (1999) and Rose Ackerman's (2007) argument, the judicial branch plays a unique role in ensuring impartiality in all areas of the public and private sectors. In this regard, an independent and effective judiciary and the police are the main institutions charged in the literature with improving and ensuring legal accountability. The findings of this dissertation complement this argument by claiming that there is not enough research on the role of prosecution, and how it interacts with the police and the judiciary in containing corruption. Here the study contributes with a partially novel finding that the literature should explore in more depth the role of prosecution as a determinant of anti-corruption performance.

Another key finding of this study is that the more politicized the judiciary and prosecution, the worse a country's control of corruption is. This finding is consistent with

¹³²⁵ Susan Rose-Ackerman, "Trust, honesty and corruption: Reflection on the state-building process," *European Journal of Sociology* 42.03 (2001), 51.

¹³²⁶ Karklins, *System*, 105.

¹³²⁷ Klitgaard, *Controlling Corruption*, 75.

¹³²⁸ Guillermo O'Donnell, "Horizontal Accountability in New Democracies," *Journal of Democracy* 9, no.3 (1998): 112-28; Karklins, *System*; Bertram Irwin Spector, Phyllis Dininio, and Michael Johnston, "Learning Across Cases: Trends in Anti-Corruption Strategies," in *Fighting Corruption in Developing Countries: Strategies and Analysis*, ed. Bertram Spector (Kumarian Press Inc., 2005); Tamir Moustafa and Tom Ginsburg, "Introduction: The Function of Courts in Authoritarian Politics," in *Rule By Law: The Politics of Courts in Authoritarian Regimes*, ed. Ginsburg and Moustafa (Cambridge: Cambridge University Press, 2008).

O'Connor's argument – for the judiciary to be able to uphold the rule of law, it has to be “relatively free from outside interference” as a whole.¹³²⁹ This study further claims the necessity to include prosecution in the study of political corruption.

Furthermore, this study's findings are consistent with the general argument in the literature - any punitive measures are useful only when they are implemented and enforced.¹³³⁰ In particular, when lawmaking is separated from judicial activity by granting powers to separate actors, the threat of potential “governmental arbitrariness” is significantly reduced.¹³³¹ Moreover, if the judiciary's not independent, most legal and programmatic mechanisms put forward to reduce corruption in other sectors of society will be significantly undermined.¹³³² If the judiciary does not take action on abuses of legislation on anticorruption, and if trials continue for years, “anticorruption legislation remains toothless.”¹³³³

Additionally, this study covers an important gap in the literature. According to the World Bank (2006) research on institutional reforms undertaken in the CEE region up to 2004, areas that have been prioritized by policy-makers have predictably shown better performance, while those areas that were “the most complicated” or “beset with conflicting objectives” have proven fewer positive results.¹³³⁴ The report did not specify which these specific areas were. This study has identified these areas, foci of corruption, for each individual case. They mostly relate but are not limited to party financing, lobbying, and public procurement.

¹³²⁹ O'Connor, *Vindicating the Rule of Law*, 3.

¹³³⁰ Blechinger, “Political Parties.”

¹³³¹ O'Connor, *Vindicating the Rule of Law*.

¹³³² Spector, *Fighting corruption in developing countries*.

¹³³³ Spector, *Fighting corruption in developing countries*, 39.

¹³³⁴ World Bank. *Anticorruption in transition* 3, xv.

One important finding of this research is the dominance of certain foci of corruption across the region: party financing and the non-transparent nature of the legislative process (close ties between business and political elites). These are more serious in the backsliding countries. A new avenue for the anti-corruption research agenda would be, in this context, to shed more light on these particular foci of corruption via case studies to understand why these areas are more resistant to reform than others and under what conditions reform can be in fact adopted. This would help address the core of democratic backsliding in the CEE region.

This study highlighted the importance of timing of reforms, a salient factor identified in the literature to explain sustainability of reforms. It stressed the importance of existence of strong institutional anti-corruption designs namely *before accession* as a determinant of anti-corruption performance after joining the Union because of two main reasons: (a) once EU conditionality disappeared after accession, evidence showed that fewer reforms have been passed to create or improve existent checks on power or address more general weaknesses of anti-corruption institutions, especially among the backsliders. In the absence of sticks and carrots provided by the EU accession process, the process of anti-corruption reform has generally slowed down even among the frontrunners. According to an expert, if the Polish government used to invite anti-corruption specialists on a regular basis to engage in active cooperation on institutional anti-corruption reform, and the media was a permanent visitor of organizations working on anti-corruption during the EU accession process, none of this continued once Poland joined the EU.¹³³⁵

¹³³⁵ Anonymous (expert), interviewed by author, Warsaw, September 2016.

Moreover, (b) the EU pre-accession process had the effect of gradually ‘locking-in’ institutional change. Evidence showed that anti-corruption agencies such as KNAB in Latvia and STT in Lithuania once set up before accession, proved admirable results once firmly established by questing corruption in the highest echelons of power. Also, attempts at dismantling institutions often failed as in Slovakia where the anti-corruption court managed to resist pressure of being abolished after accession. Hence, findings are supportive of Sedelmeier’s argument that “lock-in of pre-accession institutional changes can contribute to their persistence even after the EU’s sanctioning power weakens.”¹³³⁶ In this context, the set up of anti-corruption institutions before accession represented a critical juncture for the future anti-corruption performance of the new EU member states.

Finally, the analysis of individual cases’ anti-corruption institutional designs also confirms the OSI’s EU Accession Monitoring Report conclusion – the Union’s expectations regarding what states had to do to meet the requirements of membership specifically in the field of control of corruption “have often been limited to the ratification of conventions, without soliciting more meaningful change.”¹³³⁷ That was the case because the EU lacked at that time comprehensive anticorruption policies. As a result, CEE states had the leeway to create and adopt solutions that found easier to build political consensus around them. The study confirms a concern that the OSI Monitoring Report elucidated, and namely that “without meaningful and continuing enforcement [reforms] will not lead to lasting improvements; indeed, there is even a danger that

¹³³⁶ Sedelmeier, “Lock-in of institutional change after EU accession,” 20.

¹³³⁷ Open Society Institute, *Monitoring the EU Accession Process*, 11.

ineffective measures will undermine the credibility of all anti-corruption efforts.”¹³³⁸ This study finds partial support for this concern in the backsliding states.

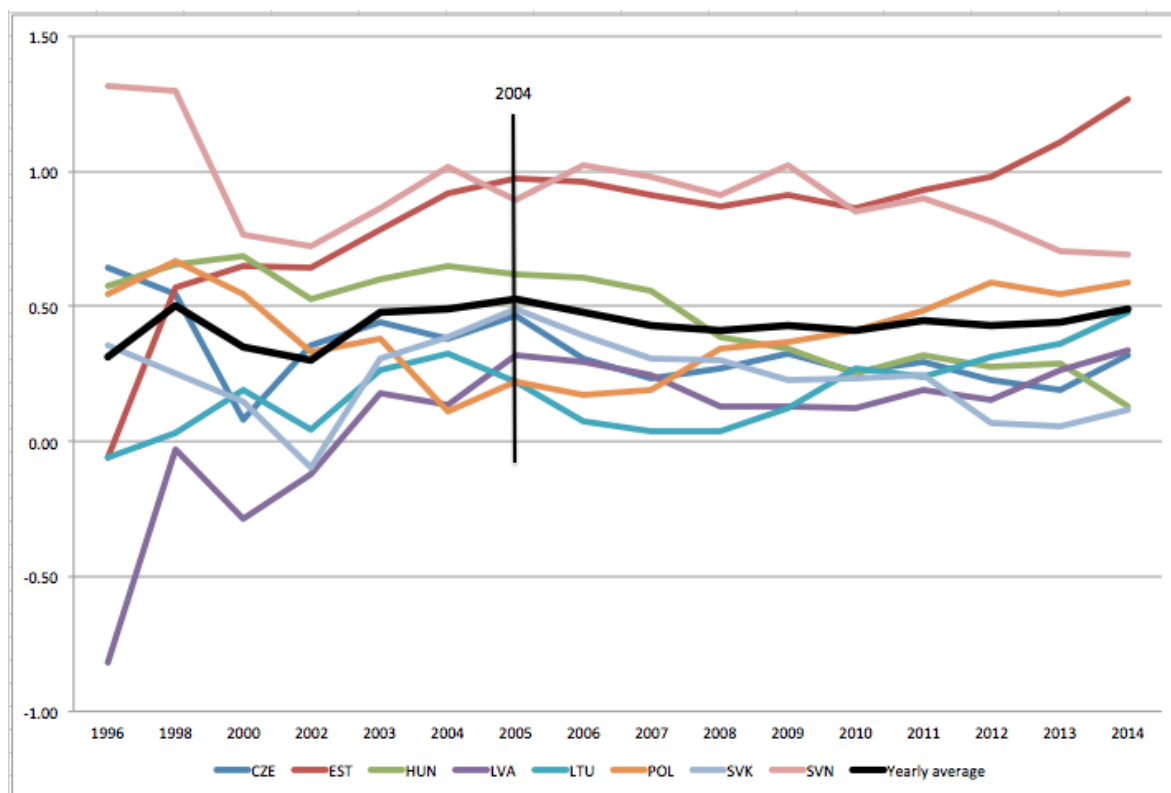
This study has argued hence that states with strong anti-corruption institutions and with independent judiciaries are more effective at containing corrupt practices, preserving the rule of law, and subsequently improving anti-corruption performance. A logical next step in this study would be to explain why some states managed to carry out meaningful reforms, particularly in the judiciary, while others have not. More generally, under what conditions are domestic oversight and monitoring mechanisms reformed? This endeavor will be undertaken in future research to come.

¹³³⁸ Open Society Institute, *Monitoring the EU Accession Process*, 11.

APPENDICES

ANNEX A. Variation in Anti-Corruption Performance

Figure A.1 Control of Corruption, Longitudinal Trends, 1995-2013



Source: author's own elaboration, based on Worldwide Governance Indicators (World Bank, 2014)

ANNEX B. Literature Review

Table B.1 Key explanatory factors of anti-corruption performance

International determinants	<ul style="list-style-type: none"> ○ International trade ○ international economic crisis ○ Openness of international markets ○ Changes in relative prices on international markets ○ Transnational epistemic communities ○ Transnational networks of activists and advocacy groups ○ Involvement in international organizations ○ Dependence on EU trade ○ Foreign aid ○ EU membership and conditionality
Institutional determinants	<ul style="list-style-type: none"> ○ Institutional incentives for public officials ○ Weak institutions ○ Monopolies of decision-making power ○ Opportunities for corruption and deterrents imposed by state and society ○ Independent and effective judiciary and police ○ Credible enforcement of penalties ○ Compliance with the rule of law ○ Overregulated legislation ○ Enlargement of the state bureaucratic apparatus
Political determinants	<ul style="list-style-type: none"> ○ Party competition ○ Long-term one-party rule ○ Party control over the public sector and society ○ Active political opposition ○ Internal control mechanisms ○ Politicization of state institutions ○ Party discipline ○ Political will ○ Persistence of “bad” social ○ Corrupt networks of power
Economic determinants	<ul style="list-style-type: none"> ○ Economic openness ○ Economic development level ○ Oligarchy and powerful economic elites ○ State capture ○ Economic preferences ○ Economic liberal policies ○ Privatization ○ Economic growth
Socio-cultural determinants	<ul style="list-style-type: none"> ○ Active and informed citizenry ○ Cultural standards and values ○ Communist legacy in the CEE region

	<ul style="list-style-type: none">○ Informal practices○ Strong civil society○ Free media and press
Time factor	<ul style="list-style-type: none">○ Timing of anti-corruption reforms

Source: author's own elaboration based on Chapter 2.

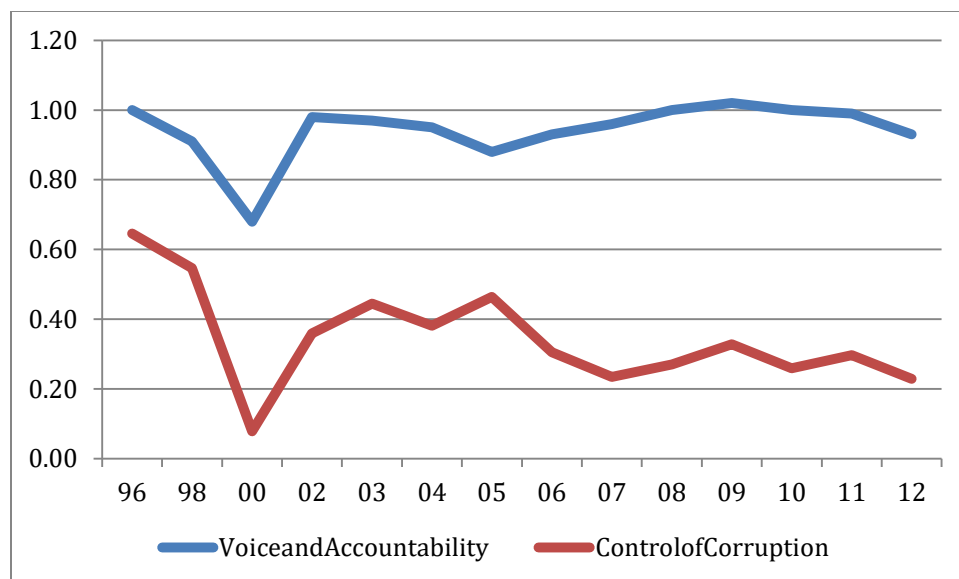
Table B.2 Corruption: Main problem areas identified in 2001

<i>Country</i>	<i>Main problems identified in EUMAP report, 2001</i>	<i>Main problems identified in 2001 Regular Report</i>
<i>Bulgaria</i>	Customs Political party funding Local Government Judiciary	Judiciary Enforcement of existing anti-corruption law Burdensome licensing and permit procedures
<i>Czech Republic</i>	Formal implementation of anti-corruption strategy Uncontrolled lobbying Public procurement	No civil service law Public procurement
<i>Estonia</i>	Weak law enforcement Ineffectiveness of anti-corruption institutions Local Government Public procurement	Police (petty corruption) Customs
<i>Hungary</i>	Political party patronage Independence of prosecution Public procurement Media independence	Non-specific
<i>Latvia</i>	Poor coordination of anti-corruption institutions Uncontrolled lobbying Political party funding Public procurement	Public administration Lack of coordination
<i>Lithuania</i>	Lack of reliable information Political party funding	Public administration Need to approve National Anti-corruption Strategy
<i>Poland</i>	Lack of will to produce anti-corruption strategy Off-budget agencies Independence of prosecution Corruption as a populist political issue	Public perceptions of corruption Lack of coherent approach, coordination and resources
<i>Romania</i>	Judiciary, prosecution and police Party finance Parliament: immunities Political party funding Legal provisions against media	Lack of secondary legislation to follow anti-corruption law Non-functioning anti-corruption agency Party finance
<i>Slovakia</i>	Tolerance of corruption Failure to implement anti-corruption strategy Judiciary Public administration Health and education	Judiciary Anti-corruption strategy not yet implemented
<i>Slovenia</i>	Lack of anti-corruption strategy Conflict of interest, clientelist networks Weak law enforcement Local government Public procurement Weak civil society	Conflict of interest

Source: Open Society Institute. *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*. The Accession Monitoring Program, (2002): 69.

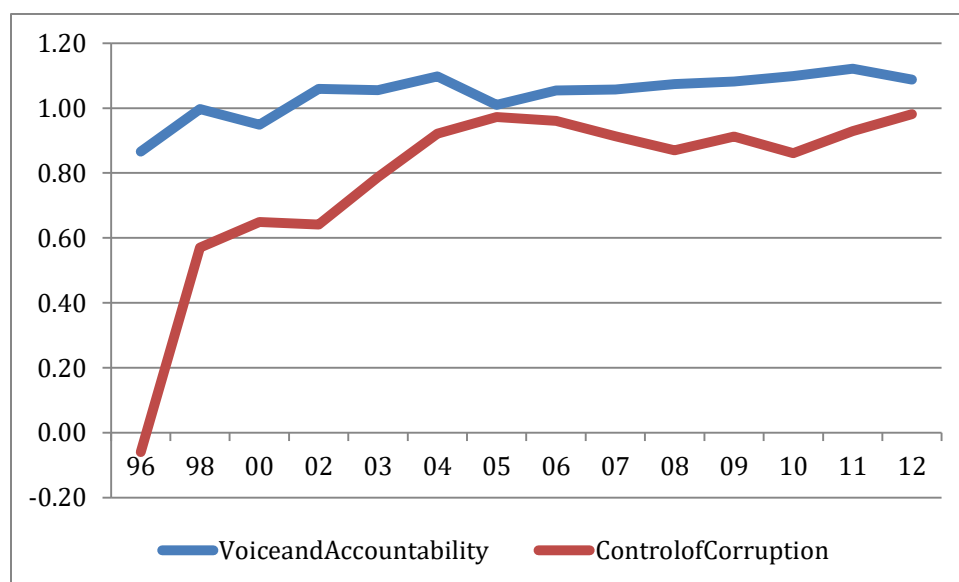
Figure B.3 Association between Independent Media and Control of Corruption, selected countries

(a) Backslider: Czech Republic



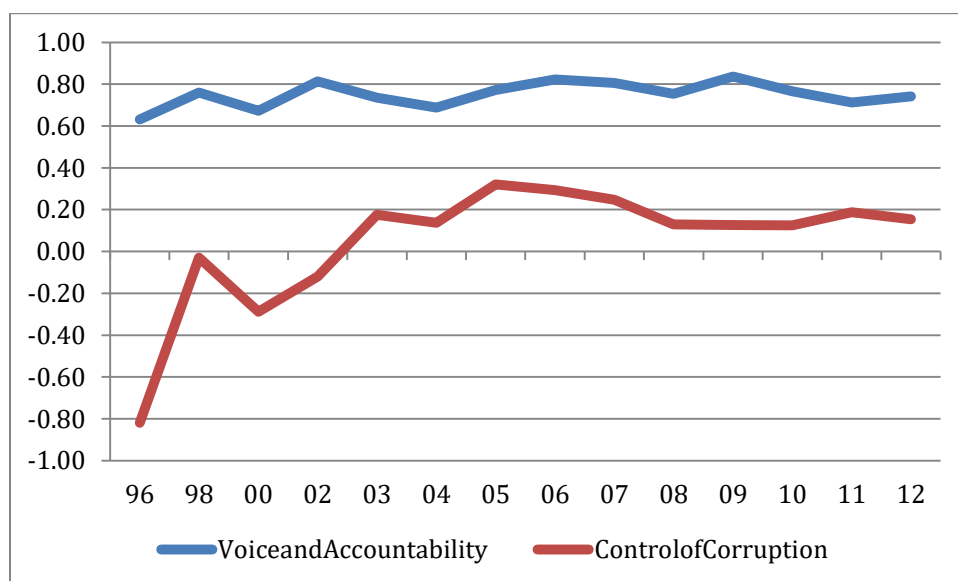
Source: Worldwide Governance Indicators, selected countries (World Bank, 2013)

(b) Frontrunner: Estonia



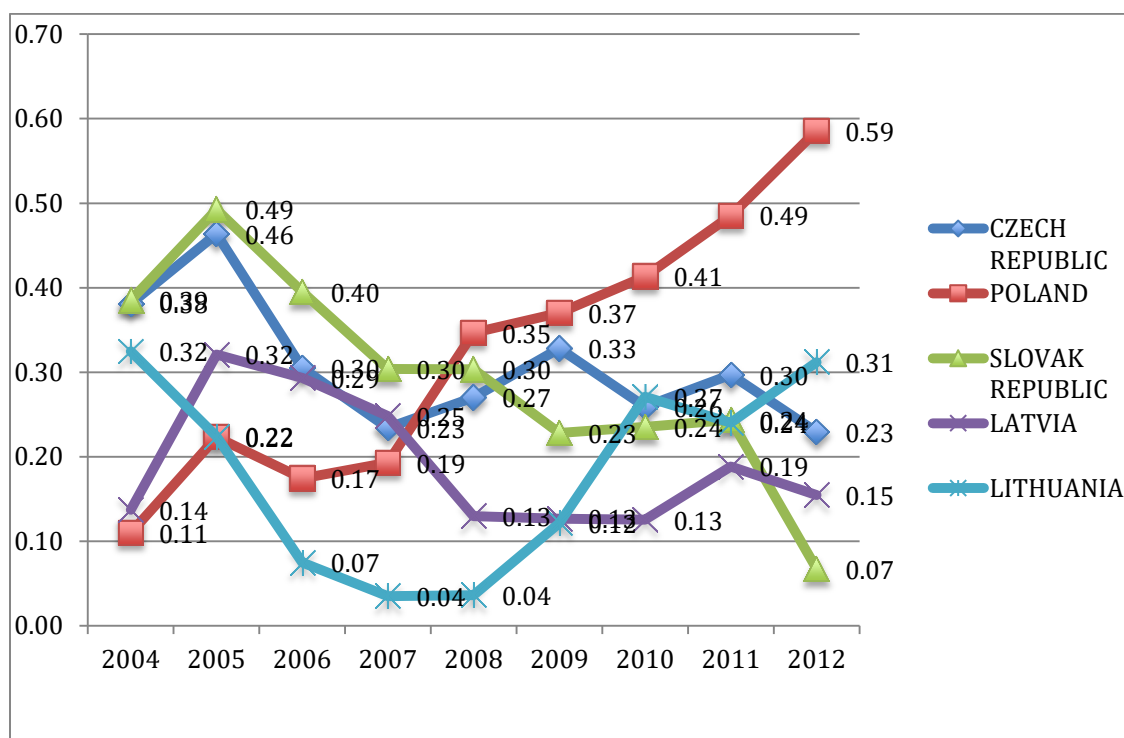
Source: Worldwide Governance Indicators, selected countries (World Bank, 2013)

(c) Middle group: Latvia



Source: Worldwide Governance Indicators, selected countries (World Bank, 2013)

Figure B.4 Variation of anti-corruption performance in the Czech Republic, Slovakia, Poland, Lithuania, and Latvia after accession



Source: Worldwide Governance Indicators (World Bank, 2013)

ANNEX C. Theoretical considerations

Annex C.1 Theoretical Assumptions

This subsection explains the assumptions that this study has employed to develop the theoretical argument detailed above. The theoretical approach uses as starting point a combination of economic and institutional assumptions. First, this study builds on the economic perspective assumption that economic incentives and opportunities that encourage or discourage individuals from engaging in corrupt behavior play a key role in understanding anti-corruption performance. In this context, and in line with della Porta and Vannucci, individuals “are attracted to *illegal* practices by their *interests*, that is to say, by the combination of their preferences for monetary gains and the set of institutional opportunities allowing such advantages from the exercise of public authority.”¹³³⁹

Moreover, the study borrows from rational choice institutionalism and conceptualizes actors as self-interested utility-maximizers. Corruption hence is studied here as the outcome of rational individual choices. In this context, the balance created between expected costs and rewards determines whether an individual chooses to participate in corrupt behavior or not. In this manner, the decision to engage in an act of corruption is contingent upon “the expected risk of being denounced and punished, the severity of the potential penal and administrative penalties, and the expected rewards as compared with available alternatives.”¹³⁴⁰ Constraints on the behavior of political elites represent hence a crucial element of the fight against corruption, in this respect.

¹³³⁹ Donatella Della Porta, and Alberto Vannucci, “When Anti-Corruption Policy Fails: The Italian Case Eighteen Years after the Mani Pulite Investigations,” *The Social Construction of Corruption in Europe* (2012), 13.

¹³⁴⁰ Della Porta and Vannucci, “When Anti-Corruption Policy Fails,” 13.

Moreover, the bureaucrats' behavior is guided also by an economic rationale, another assumption of this study: these tend to behave as monopolists who take advantage of increasing prices generated by scarcity therefore it is a must to de-monopolize decision making if one wants to avoid worsening corruption.¹³⁴¹ This assumption is important particularly for the CEE region where political power was fully concentrated in the executive during the communist era. Moreover, among the most salient opportunities and incentives that influence an individual's decision to engage in acts of corruption are the costs of political mediation, the general level and characteristics of state intervention in socio-economic life, the size of the rents that can be collected by corrupt agents, the degree of discretionary power in the exercise of public authority, the relative efficiency and severity of various administrative and political controls, and the types of bureaucracy and procedures in which acts of corrupt behavior occur.¹³⁴² Deriving from the aforementioned list, the anti-corruption research should center on "the institutional incentives facing officials and citizens to accept and to pay bribes."¹³⁴³ That is mostly because institutional change can contribute to the substitution of habits and patterns of corruption with those of accountability. Realigning incentives by increasing the risk to be prosecuted or loose seat in parliament as a consequence of voter dissatisfaction with officials' behavior or action undertaken is hence seen as an imperative in decreasing corruption.¹³⁴⁴

¹³⁴¹ Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 1978), 90.

¹³⁴² Rose-Ackerman, *Corruption*.

¹³⁴³ Susan Rose-Ackerman, "Trust, honesty and corruption: Reflection on the state-building process," *European Journal of Sociology* 42, no. 03 (2001), 51.

¹³⁴⁴ Verena Blechinger, "Political Parties," in *Fighting Corruption in Developing Countries: Strategies and Analysis*, ed. Bertram Spector (Bloomfield, CT: Kumarian Press, 2005), 40.

This study further builds on the various, but very similar, models of explaining corruption that assume corrupt behavior to be a fine equilibrium between opportunities (resources) for corruption and deterrents (constraints) imposed by state and society.¹³⁴⁵ *Opportunities*, in line with Mungiu-Pippidi's conceptual framework, are the discretionary powers available to the political elite due to monopoly as well as privileged access under specific power arrangements.¹³⁴⁶ Furthermore, the *deterrents* are the legal and the normative constraints on power. In this sense, the judiciary is the *legal* constraint that enforces the legislation, as well as a body of effective and comprehensive laws that covers COI and enforces a clear public-private separation. The *normative* deterrents imply that existing societal norms endorse public integrity and government impartiality, and permanently and effectively monitor deviations from that norm through public opinion, media, civil society, and a critical electorate.¹³⁴⁷ This study employs the concepts and definitions provided above as building blocks for the proposed theoretical argument.

Moreover, *concentration of power* is a central concept in all major arguments brought up in the literature review chapter, and proven to immanently lead to more political corruption: the more monopolized power is, the more opportunities and less checks for abusing it for private gains. This study takes as an assumption this causal link between more concentration of power and more opportunities for corrupt behavior, and builds further by asking how we can explain more concentration of power in some new

¹³⁴⁵ Mungiu-Pippidi (2015) builds on Klitgaard (1988) and Rose-Ackerman (1978; 2001).

¹³⁴⁶ Examples provided by Mungiu-Pippidi (2013) are negative social capital networks, cartels and other collusive arrangements, poor regulation encouraging administrative discretion, lack of transparency turning information into privileged capital for power-holders and their relations. Cited in Mungiu-Pippidi, Alina. "The good, the bad and the ugly: controlling corruption in the European union." *Advanced Policy Paper for Discussion in the European Parliament* (2013). http://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Presse/imported/downloads/xcms_bst_dms_37612_37613_2.pdf

¹³⁴⁷ Mungiu-Pippidi, 2015.

EU member states but not in others. This study builds on the previously discussed assumptions, hence, and hypothesizes that in order to understand variation in ACP, we need to go one step backward and explain what causes concentration of power. This study claims hence that *more concentration of power is an outcome of specific institutional arrangements that allow elected and appointed public officials to abuse their powers in corrupt exchanges*. This leads us into arguing that we need to review particular national institutional designs that help contain / proliferate concentration of discretionary decision-making power that, consequently, explain occurrence or deterrence of corrupt practices.

Another central concept to explaining patterns of corruption, in this context, is *institutions*. In this context, the predominant institutional argument, as mentioned in the literature review section, is that weak institutions breed corruption.¹³⁴⁸ Yet, the literature does not clarify what these institutions are, how their designs differ from one state to another, as well as what loopholes they create in the legislation that create opportunities for misuse or abuse. Among the endless list of ineffective institutions, however, a particular attention in the literature is given to the role of *checks and balances* that should be put in place by countervailing powers to contain political corruption.¹³⁴⁹ In line with the argument made by della Porta (1999) checks on behalf of the executive and judicial branches of government are a must to contain political corruption.¹³⁵⁰ A weak (oftentimes also corrupt) executive, in this regard, increases the risks for corrupt behavior of politicians by reducing the efficacy of controls. In this sense, “incentives to corruption

¹³⁴⁸ Huntington, *Political Order*; Heywood, *Political Corruption*; Karklins, *The System Made Me Do It*; World Bank, *Anti-Corruption in Transition 3*.

¹³⁴⁹ Karklins, *The System Made Me Do It*, 105.

¹³⁵⁰ della Porta defines political corruption as corrupt behavior of members of the legislature, and bureaucratic corruption as corrupt practices of members of the executive.

grow, as they do for any other illegal activity, the less the probability of being discovered and punished, that is, the less efficient control mechanisms are.”¹³⁵¹ The bureaucratic and legal controls, *internal* to the state apparatus, are also very relevant for reducing corruption: “an incorrupt bureaucracy represents an essential watchdog on and counterweight to the activities of politicians.”¹³⁵² This study expect to find hence institutional checks that exist between and within the executive and the legislature to be the least reformed since they bear the highest cost for reform as a viable check on corrupt practices of political elites.

Internal control mechanisms suffer, in this context, from a “congenital weakness: *the vulnerability to collusion between controllers and controlled*, to the detriment of the public.”¹³⁵³ The same principle is also valid for the control that elected officials should exercise over bureaucrats: political corruption also facilitates bureaucratic corruption insofar as politicians would seek to collude instead of denouncing illegal behaviors in the public administration. Based on della Porta’s (1999) findings political corruption is oftentimes intertwined with bureaucratic corruption. In this sense, a weak executive is not able to exert strong oversight over corrupt legislative behavior, and vice versa. In such situations, more often found in young democracies, a strong and credible external check both on the executive and the legislature is a must. According to della Porta,

“when reciprocal controls between elected and career public administrators do not work, given that corrupt exchanges are breaches of the criminal law, the ‘natural’ adversary of corrupters and the corrupt is the **magistracy**.”¹³⁵⁴

¹³⁵¹ Donatella Della Porta and Alberto Vannucci, *Corrupt exchanges: Actors, resources, and mechanisms of political corruption* (Transaction Publishers, 1999), 131.

¹³⁵² della Porta and Vanucci, *Corrupt Exchanges*, 131.

¹³⁵³ Jon Elster, *Nuts and bolts for the social sciences* (Cambridge University Press, 1989) cited in Donatella Della Porta, “A judges’ revolution? Political corruption and the judiciary in Italy,” *European Journal of Political Research* 39, no. 1 (2001), 2.

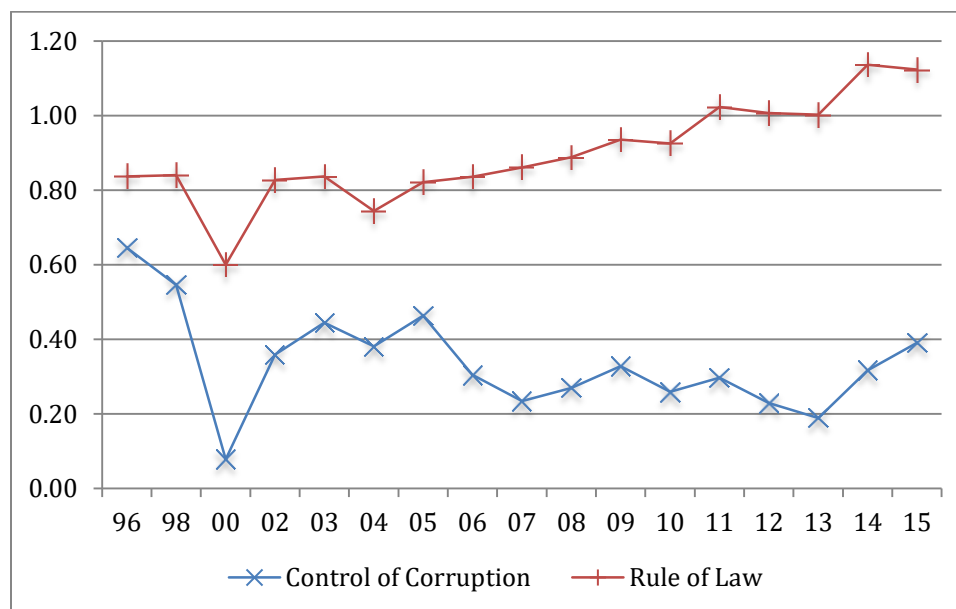
¹³⁵⁴ della Porta and Vanucci, *Corrupt Exchanges*, 131-132.

This brings us again to the importance of reducing or eliminating monopolies of decision-making power, and the crucial role of control and oversight mechanisms that has been highlighted in the literature on corruption. To sum up, this study uses these central concepts and assumptions to make the following theoretical argument: Strong institutional anti-corruption designs that have been established or reformed before accession to have fewer loopholes that increase rent-seeking opportunities for public office holders are a necessary condition for an improved or stable anti-corruption performance after accession. This is not a sufficient, however. Anti-corruption institutions need to be backed up by a strong and independent judiciary, as an external check on power when internal checks between the executive and the legislature do not function well. Since this study expects to find weak institutional checks between the executive and legislative powers, there is need for external checks (namely a strong and independent judiciary) to hold public officials accountable.

Annex C.2

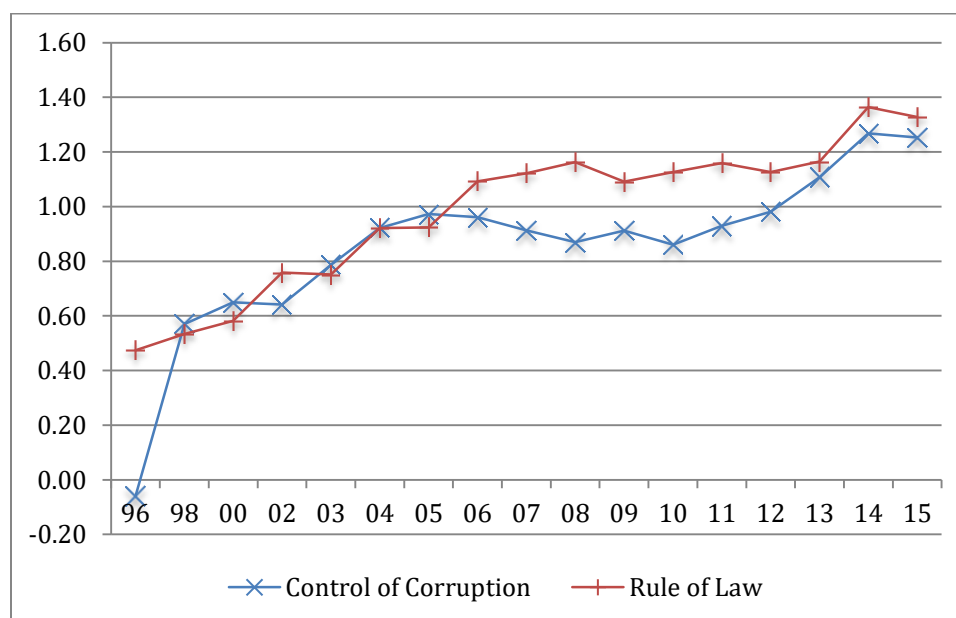
Figures C.2 Association between rule of law and control of corruption

(a) Czech Republic: Control of Corruption and Rule of Law, 1995-2014



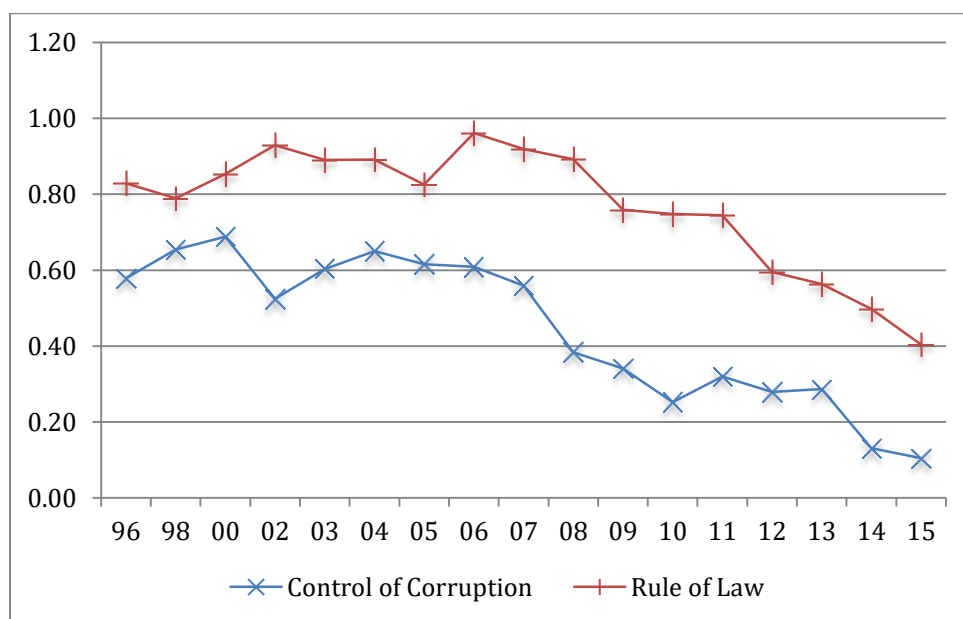
Source: World Bank 2015. World Governance Indicators 1996-2015.

(b) Estonia: Control of Corruption and Rule of Law, 1995-2014



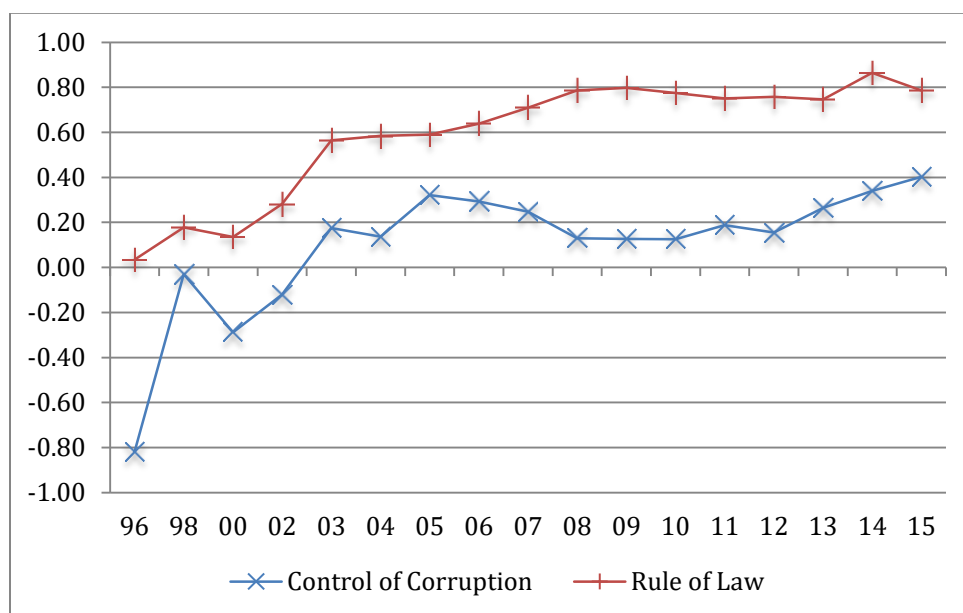
Source: World Bank 2015. World Governance Indicators 1996-2015.

(c) Hungary: Control of Corruption and Rule of Law, 1995-2014



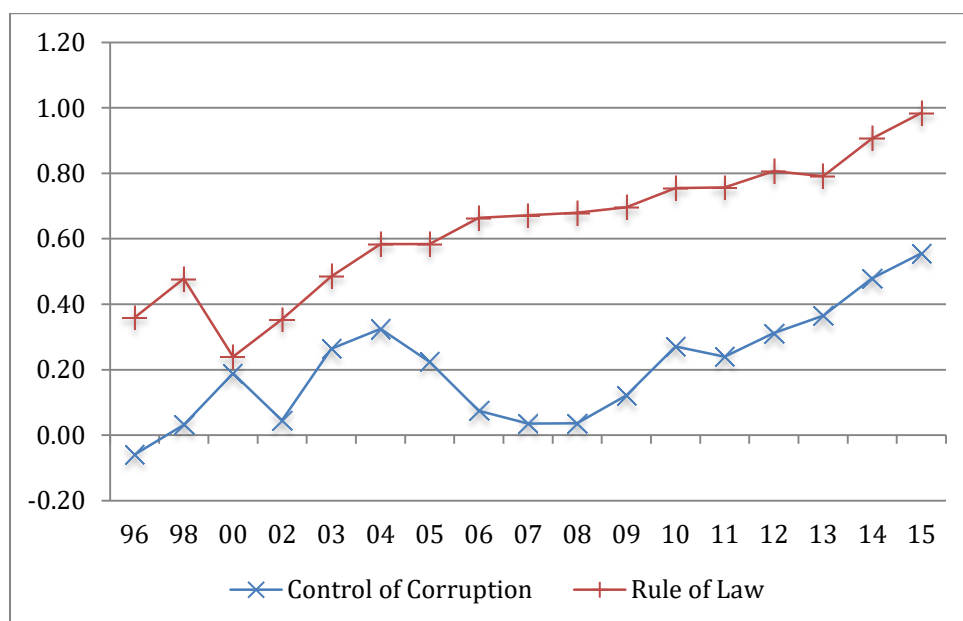
Source: World Bank 2015. World Governance Indicators 1996-2015.

(d) Latvia: Control of Corruption and Rule of Law, 1995-2014



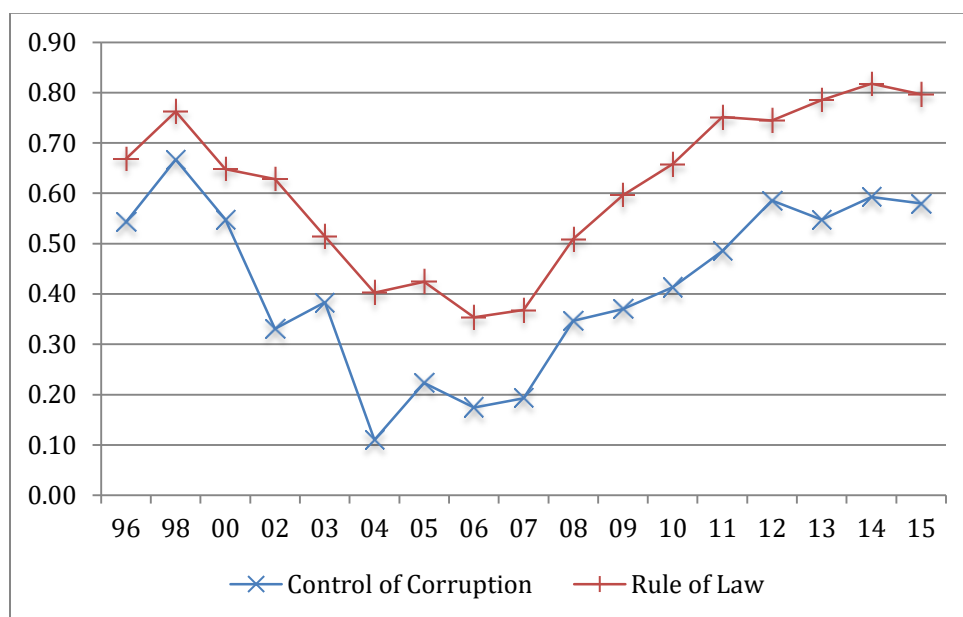
Source: World Bank 2015. World Governance Indicators 1996-2015.

(e) Lithuania: Control of Corruption and Rule of Law, 1995-2014



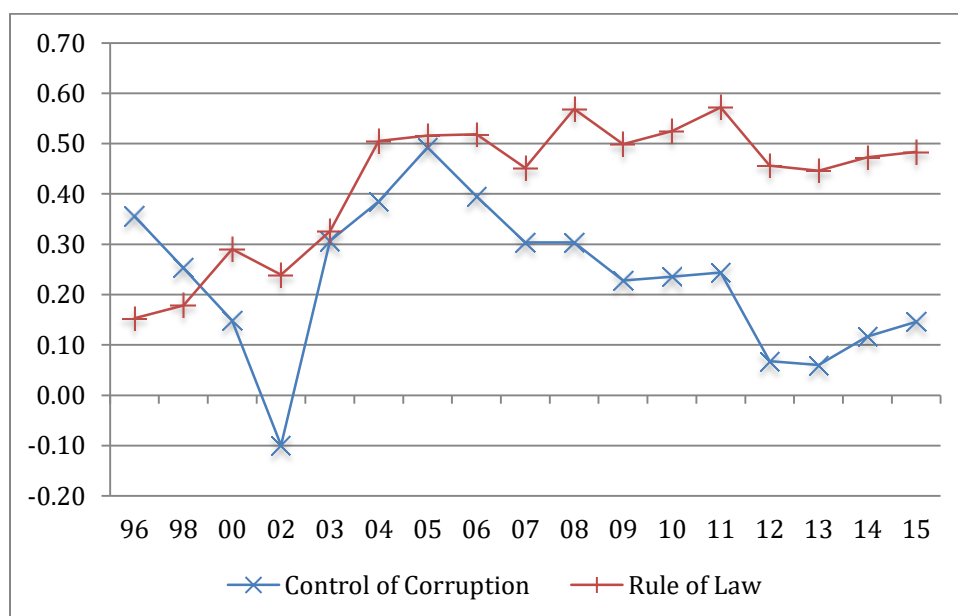
Source: World Bank 2015. World Governance Indicators 1996-2015.

(f) Poland: Control of Corruption and Rule of Law, 1995-2014



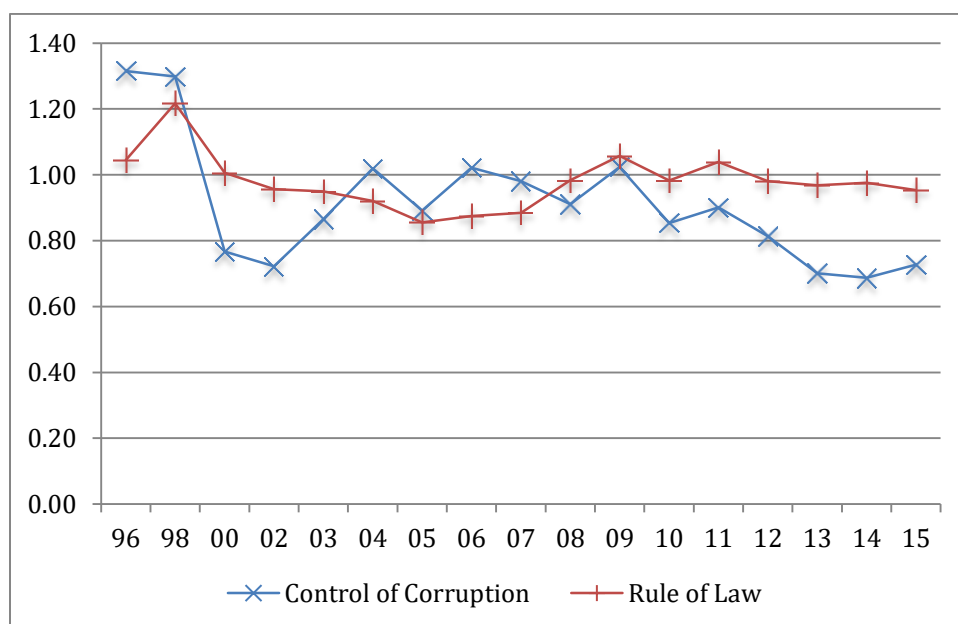
Source: World Bank 2015. World Governance Indicators 1996-2015.

(g) Slovak Republic: Control of Corruption and Rule of Law, 1995-2014



Source: World Bank 2015. World Governance Indicators 1996-2015.

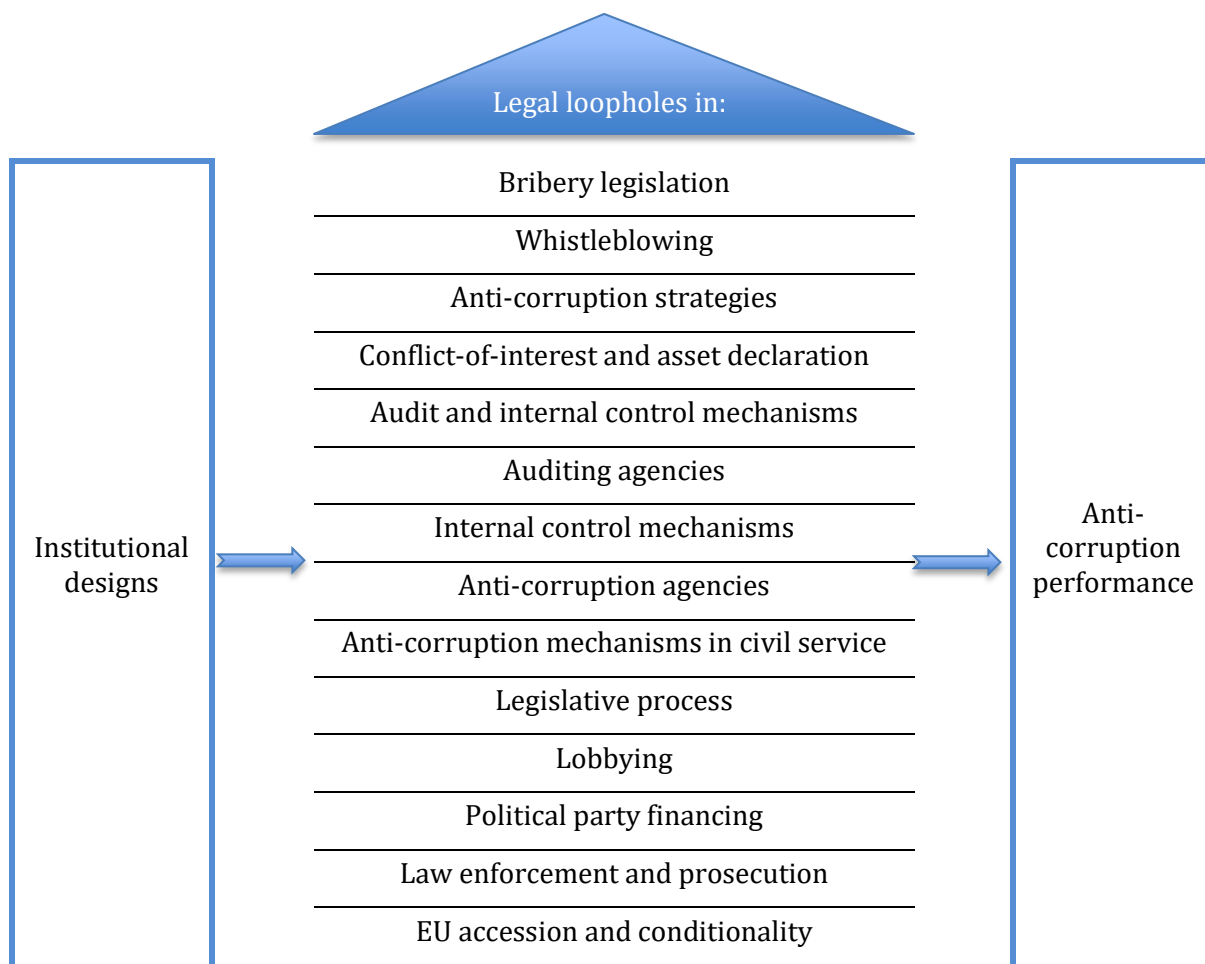
(h) Slovenia: Control of Corruption and Rule of Law, 1995-2014



Source: World Bank 2015. World Governance Indicators 1996-2015.

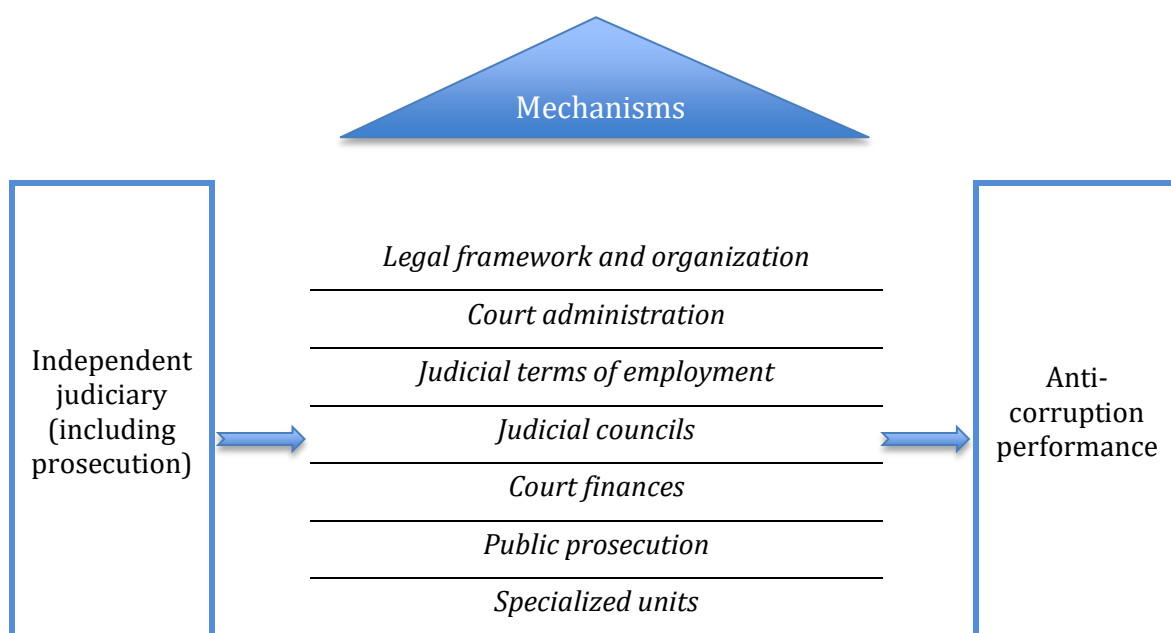
Annex C.3

Figure C.3.1 Mechanisms Explaining Anti-Corruption Performance



Source: author's own elaboration

Figure C.3.2 Judicial arrangements that explain anti-corruption performance



Source: author's own elaboration

ANNEX D. Methodological Considerations

Table D.1 Criteria for structured, focused comparison of anti-corruption institutional designs of the new EU member states

Criteria for assessment	Assessment Sources
Anti-corruption legislation (bribery)	○ EC Regular Reports (1998-2003)
<i>Whistleblowing</i>	
Anti-corruption strategies	
<i>Conflict-of-interest and asset declaration</i>	○ GRECO assessment reports (2000-2002; 2003-2006; 2007-2011; 2012-2014)
Audit and internal control mechanisms	
<i>Auditing agencies</i>	
<i>Internal control mechanisms</i>	○ 2003-2016 Freedom House <i>Nations in Transit</i> Reports
Anti-corruption agencies	
Anti-corruption mechanisms in the civil service	
Legislative process	○ 2014 EC Anti-Corruption Report
<i>Lobbying</i>	
<i>Political party financing</i>	
Law enforcement and prosecution	○ 2002 OSI EUMAP Report
EU accession and conditionality	

Source: author's own elaboration based on the literature review chapter

Annex D.2 Field Research Detailed Description

As part of this dissertation, I have conducted a total of 55 interviews (51 in-person, and 4 by Skype) in the period September 16-October 8, 2016.¹³⁵⁵ Additionally, I have also received answers to interview questions by email conversation from two respondents who could not meet me in person due to conflicting scheduling. Tables and Figures below summarize the statistics for the types of respondents per case and per category. The objectives of the field research, the detailed study procedures (design, sampling, measurement, instrumentation), consent procedures, internal validity and data collection are included and explained in the Research Protocol below.¹³⁵⁶

Altogether, 20 elite and experts interviews were conducted in Slovakia, 16 in Poland, and 19 in Estonia. A total of 80 potential interviewees have been contacted with interview requests. 25 of them have not responded to the request. For example, On September 8, 2016 after several emails sent to the European Commission Office in Bratislava, I have called the institution to schedule a meeting with their political analyst. They have not returned my phone call. The same day, I have visited the Supreme Court and the General Prosecutor's Office in an attempt to speak to the institutions' spokespersons, but I was not allowed to access any of the institutions without prior arrangements. Another example, after sending a request for an interview to the Polish Ministry of Justice

¹³⁵⁵ One additional in-person interview for the Polish case was held in Chisinau, Moldova, in February 2017, but is not included in the overall number of interviews since it took place outside of the fieldwork visits.

¹³⁵⁶ As a note, the study intended to also conduct an online expert survey that was dropped from this research due to time and resource constraints. Also, the study asked for IRB approval for conducting interviews in all eight states, however only three have been included in this study due to the choice of a nested analysis model that allows generalization of findings based on a restricted number of in-depth case studies.

addressed to Mr. Sebastian Kaleta, current Secretary of State, I was advised by email¹³⁵⁷ to send in the interview questions, and someone will respond in written form since no one from the Ministry was able to receive me due to prior commitments and time restraints. As of now, I have not received any answer from representatives of the Ministry of Justice.

As part of the field research, in Warsaw I have also attended two sessions on the rule of law in Poland, and on the post-soviet judiciary, as part of the annual meeting of the Human Dimension Implementation Meeting (HDIM) of OSCE participating States organized every year by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).¹³⁵⁸ Notes from the interviews have been included in the qualitative analysis on judicial independence.

¹³⁵⁷ Email conversation, September 26, 2016.

¹³⁵⁸ http://www.osce.org/odihr/hdim_2016

Table D.2.1 Types of respondents, % per case

Type of respondent	Cases		
	Slovakia	Poland	Estonia
Expert	38.1% (8)	52.9% (9)	26.3% (5)
Policy-maker	14.3% (3)	11.8% (2)	15.8% (3)
Public official	19.0% (4)	5.9% (1)	31.6% (6)
Judge	4.8% (1)	11.8% (2)	10.5% (2)
Journalist / editor	23.8% (5)	17.6% (3)	15.8% (3)
Total	21	17	19

Figure D.2.2 Types of respondents, per case

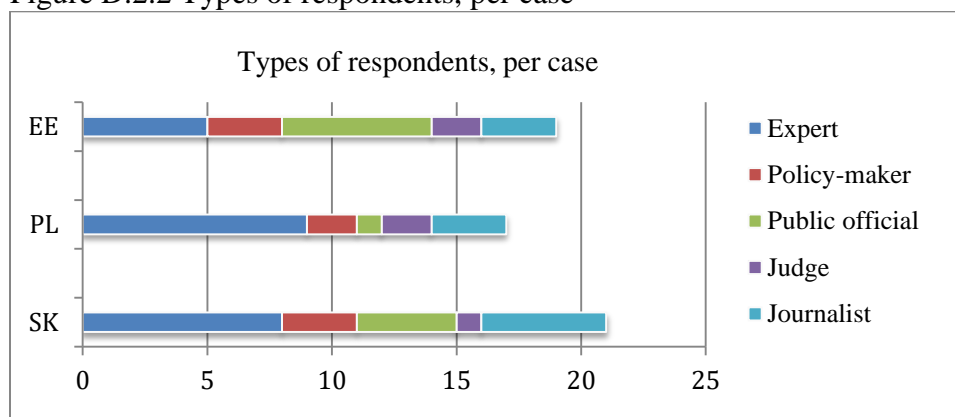
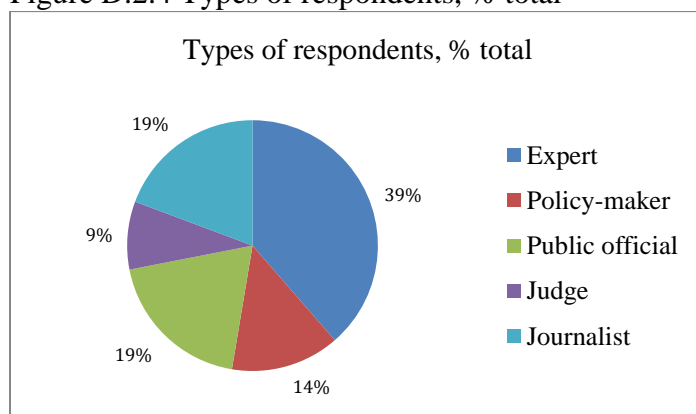


Table D.2.3 Types of respondents, % per category

Type of respondent	Cases			Total
	Slovakia	Poland	Estonia	
Expert	36.4% (8)	40.9% (9)	22.7% (5)	22
Policy-maker	37.5% (3)	25% (2)	37.5% (3)	8
Public official	36.4% (4)	9.1% (1)	54.5% (6)	11
Judge	20% (1)	40% (2)	40% (2)	5
Journalist / editor	45.5% (5)	27.3% (3)	27.3% (3)	11

Figure D.2.4 Types of respondents, % total



Annex D.3 List of interviews per case study

Interviews in Bratislava and Banska Bystrica, Slovakia

September 6-15, 2016

- 18 in-person interviews
- 2 Skype interviews
- 1 email conversation

Interviews in Warsaw, Poland

September 16-27, 2016

- 15 in-person interviews
- 1 Skype interview
- 1 email conversation
- 1 in-person interview held in February 2017, outside fieldwork visit (not included in above calculations)
- Attended two sessions on the rule of law in Poland and the post-soviet judiciary as part of the OSCE Human Dimension Implementation Meeting 2016¹³⁵⁹.

Interviews in Tallinn and Tartu, Estonia

September 28-October 8, 2016

- 18 in-person interviews
- 1 Skype interview

¹³⁵⁹ The Human Dimension Implementation Meeting (HDIM) of OSCE participating States is Europe's largest annual human rights and democracy conference. It is organized every year by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) as a platform for 57 OSCE participating States, Partners for Co-operation, OSCE structures, civil society, international organizations and other relevant actors. More details at http://www.osce.org/odihr/hdim_2016.

Annex D.4 Research protocol as submitted for IRB Approval

Attachment 1: Research Protocol

I. Title of the Project

"Post-Accession Democratic Backsliding in the New Europe: The Case of Anti-Corruption Performance"

II. Objectives

The study seeks to:

- (1) explain the causal mechanism between an independent judiciary and control of corruption in eight new EU member states: Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, and Slovakia;
- (2) clarify under what conditions is institutional reform carried out in the field of domestic monitoring and oversight mechanisms, with a particular focus on judicial institutional reform.

III. Background and Rationale

While the theoretical association between an independent judiciary and control of corruption is well established in the literature, it is yet not clear what is the causal mechanism at work behind this association. Also, the literature on institutional reform did not reach a consensus on what incentivizes legislators to adopt effective reforms, political consensus or political competition. This issue is even more stringent when it relates to the adoption of institutions of monitoring and oversight. This study aims to contribute to these debates and gaps in the literature.

Scholars have argued in favor of the decisive role of the judiciary when it comes to containing corrupt practices in public institutions. The judiciary is hence among the main institutions that are highly correlated with improved legal accountability, better control of corruption, and stronger democratic systems more generally (O'Donnell, 1998; Karklins, 2005; Spector, 2005; Moustafa and Ginsburg, 2008). According to Della Porta (1999),

"when reciprocal controls between elected and career public administrators do not work, given that corrupt exchanges are breaches of the criminal law, the 'natural' adversary of corrupters and the corrupt is the magistracy. The latter performs, in fact, a decisive function in the control of corruption: any eventual punishment of corrupted politicians in political terms is tightly bound up with the existence and visibility of criminal prosecution" (p. 131-132).

Rose Ackerman (2007) also argues that the judiciary plays a distinctive role in any society, because it creates the conditions for anti-corruption and impartiality among all other areas in the public and private sectors. Mungiu-Pippidi (2013) also argues that the "EU countries which have succeeded in building very effective control of corruption in Europe have done so by means of different institutional arrangements for their systems of prosecution and their judiciary arrangements" (p. 40). If the judiciary does not take action on abuses of legislation on anticorruption, and if trials continue for years, "anticorruption legislation remains toothless" (Blechinger, 2005, p. 39). Yet, research like Mungiu-Pippidi's or Blechinger's studies does not explain the mechanism behind this correlation.

The question of what conditions facilitate the creation of institutions that strengthen the rule of law has been addressed numerous times in the literature (Tsebelis, 1995, 2002; Rasmussen & Ramseyer, 1994; Hellman, 1998; Andrews & Montinola, 2004). To understand why effective institutional reforms were passed in some countries but not in others, we employ a veto players perspective, and argue that weaker institutions have been set up in areas where no *political consensus* was achieved due to conflicting interests among the veto players in the areas that generate most revenues and bare the highest costs for reform. One such expected area is the

judiciary that has been reformed the least in majority of cases, according to the literature. This last part of the study will hence focus on understanding why reforms in the judiciary, as an institutional check over the other two branches of government, were passed in some states but not in others.

As Rose-Ackerman (1999) points out in her discussion on corruption, multiple veto points may in fact represent an ineffective check on corruption because “those who seek influence only need to find the weak link or agenda setters to prevent passage or enforcement of anticorruption legislation” (p. 144-145). Second, as Tsebelis (1995, 1999) proves both theoretically and empirically, the capacity of a government to implement policy change decreases as the number of veto players in that government increases. He argues hence that establishing the rule of law requires policy change, and for that purpose fewer veto players is more beneficial. Yet, to the degree that establishing the rule of law requires prevention of expropriating behavior of government actors, then more veto players are in fact more beneficial for policy change.

Hence, the literature on the effects of the number of veto players on policy change is shaped by several important arguments. The first, outlined by Tsebelis (1995), concludes that multiple veto players impede policy change. More recent studies (Hellman, 1998; Moser, 1999) however suggest that multiple veto players may in fact encourage governments to implement policy change. Andrews & Montinola (2004) try to solve this debate by suggesting that the mixed results between work by Tsebelis (1999) and Hellman (1998) are based on the difference in the level of political-institutional development of the countries they study. Work that confirms Tsebelis's model (Bawn, 1999; Hallerberg & Basinger, 1998) centers on advanced, industrial countries, whereas Hellman focuses on transition countries. Andrews & Montinola (2004) argue that in emerging democracies, the benefits of economic policies are achieved only when agents responsible for implementing them are given the capacity to perform their tasks and are not subject to constant intervention from political actors.

At the same time, Andrews & Montinola (2004) note that there is almost no variation in the measure of the rule of law across established democracies, and reform resumes mainly on whether legislative veto players can agree on the adoption of policies. In emerging democracies, however, agreement on policy is not the only potential impediment to reform. The more important goal for reformers is preventing adoption of corrupt legislation and ensuring proper implementation of genuine reforms. The salient point here is that the independent agencies, necessary for policing the government, are created by the government itself through the legislative process. As North and Weingast (1989) argue, for economic policy to be implemented fairly, partisan actors must credibly commit to forgo arbitrary intervention in the enforcement of those policies. Such commitments are much more likely when there are two or more veto players.

In today's emerging democracies, and the states in the CEE region scrutinized in this study represented emerging democracies at least until they joined the European Union in 2004, top executives and legislators create the institutions expected to enforce policies. They usually make the high-level appointments to these agencies and decide on the size of budgets that determine agencies' capacity to fulfill their functions. Andrews & Montinola (2004) argue that agencies are more likely to be legally and behaviorally independent from chief executives and legislators in countries with more than one veto player. They believe that systems with two or more veto players ought to be more successful in establishing an independent judiciary than systems with just one veto player. Thus, the issue of the impact of veto players on the rule of law remains unresolved. This study contributes to this unresolved debate, and expects to find that the difficulty to reach pro-reform consensus leads to the perpetuation of institutional weaknesses from one legislature to another, and to the impossibility to pass judicial reforms. Potential pitfalls include the inability to reach out to the policy-makers involved in the preparations of the judicial reforms.

This research will help understand hence how an independent judicial branch can contain corruption, and how effective institutional reform can be pushed through the legislature. Overall, it will benefit the quality of democracy in these countries and consolidate democratic reforms. Mass media and civil society organizations are alternative mechanisms of monitoring and oversight that

could play the same role attributed to the judiciary. This study also seeks to elucidate what role these mechanisms have as alternative explanations.

IV. Procedures

A. Research Design

The study makes use of elite interviews (policy-makers, judges, appointed officials, anti-corruption experts) and survey research among experts alone. The data collected will be analyzed statistically (correlational design, descriptive statistics) as well as qualitatively by employing the structured, focused comparison method (cross-case analysis) and process tracing (within case analysis).

B. Sample

Within a purposive sample, 80 individual interviewees from a total of eight countries will be contacted by email to inform them about the project, then follow-up phone calls and/or emails will be used to schedule an appointment for the face-to-face interviews. They will be selected based on their rich anti-corruption expertise (in case of expert interviews) and/or involvement in judiciary reforms with the purpose of shedding light on the conditions that led to reforms being passed or stalled (elected and appointed officials, judges, anti-corruption bureaucrats). When selecting the interviewees to contact, preference will be given to the individuals identified in key positions that dealt with judiciary reforms in the period 1990-2014. The survey will be anonymous, and sent by email to 50 selected anti-corruption experts.

C. Measurement / Instrumentation

To understand the causal mechanism that explains how an independent judiciary helps contain corrupt behavior in public office, as well as to understand under what conditions the government carries out institutional reform of monitoring and oversight mechanisms (focus on the judicial branch) 60 minutes interviews will be conducted with individual stakeholders. The semi-structured interview (chosen for the purpose of being able to compare findings across cases) will be based on 15 open-ended questions. The interviews will be carried out in the period September 1 – December 30, 2016.

The survey will include 10 questions and will be distributed via email to 50 selected anti-corruption experts across the eight countries under study with a SurveyMonkey survey link.

D. Study Site(s)/Location of Procedures:

The interviews will be carried out both in-person (elected and appointed officials, judges, experts) and via Skype (experts) in eight countries: Czech Republic (Prague), Estonia (Tallinn), Latvia (Riga), Lithuania (Vilnius), Hungary (Budapest), Poland (Warsaw), Slovenia (Ljubljana), and Slovakia (Bratislava). The interviews will take place at the interviewee's working institution, or at a location convenient to her in case an interview at the office will not be possible. Considering the profile of the interviewees, it is expected that most interviews will take place within the premises of the Ministry of Justice, Ministry for Domestic Affairs, the Parliament, courts, anti-corruption agencies, local think tanks, civil society and research organizations.

E. Detailed study procedures

Interviews and survey will be carried out in the period September 1 – December 30, 2016. They will be qualitatively coded using Nvivo software. I do not anticipate any risks to participating in this study other than those encountered in day-to-day life. Interviewees are expected to participate in their official capacity within the limits of their professional position. The records of this study will be

kept private. However in any sort of publication to be made public I may include information that will make it possible to identify the interviewees, unless they wish the records related to the information provided by them to be kept confidential. The interviewees' identity will not be revealed in any publication of the study. Research records will be kept in a locked file cabinet in a locked room with limited access (investigators only). Electronic data will be stored in an encrypted folder (password-protected) on a password-protected computer in a locked room; only myself as the only researcher will have access to the records. With the permission of the interviewee, I would also like to tape-record the interview. If I tape-record the interview, I will destroy the tape after it has been transcribed, which I anticipate will be within three months of its taping.

F. Consent Procedures:

An informed consent form will be sent in advance to the interviewee to be signed and returned electronically or on the day of the interview in a physical copy. The informed consent will explain the purpose of the study to the subject by the Principal Investigator. It will be read again before the start of the interview, and the subject's questions answered. A dated and signed copy will be given to the subject.

Survey consent: Before accessing the online survey, respondents will have to consent to participating in the study.

G. Internal Validity

This study uses an interview protocol with open-ended questions to make sure to avoid compromising the results by asking questions that fall short of capturing the scope of the research or inducing the interviewee to expected results. It also selects carefully the subjects for the interviews and survey: stakeholders that have in-depth knowledge of the research topic. Considering that the interviews will be conducted with subjects who might have participated directly in the reform process, this study will use triangulation to avoid potential biased answers. It uses secondary literature findings, as well as interviews experts in the topic. Also, this study will interview subjects from the entire set of cases it aims to draw conclusions about, to ensure external validity.

H. Data Analysis

Quantitatively, the study will provide descriptive statistics for all cases in the study based on the survey answers, and will try to draw comparisons across the cases to potentially identify commonalities in the causal mechanisms among the laggards and frontrunners in anti-corruption performance. Qualitatively, it will compare the answers of respondents (structured, focused comparison method) from the eight cases to draw general conclusions that will be valid for the entire set of cases when examining under what conditions can institutional reform be carried out.

Annex D.5 IRB Approval, received on August 25, 2016

RUTGERS

Office of Research and Regulatory Affairs
Arts and Sciences IRB
Rutgers, The State University of New Jersey
335 George Street / Liberty Plaza / Suite 3200
New Brunswick, NJ 08901

orra.rutgers.edu/artsci
732-235-9806

August 25, 2016

Gherasimov, Cristina

P.I. Name: Gherasimov, Cristina

Protocol #: 17-083M

Dear Gherasimov, Cristina:

Initial Amendment Continuation Continuation w/ Amend Adverse Event

Protocol Title: "Post-Accession Democratic Backsliding in the New Europe: The Case of Anti-Corruption Performance"

This is to advise you that the above-referenced study has been presented to the Institutional Review Board for the Protection of Human Subjects in Research, and the following action was taken subject to the conditions and explanations provided below:

Approval Date: 8/23/2016 **Expiration Date:** 8/22/2017 **Expedited Category(s):** 7
Approved # of Subject(s): 130

This approval is based on the assumption that the materials you submitted to the Office of Research and Sponsored Programs (ORSP) contain a complete and accurate description of the ways in which human subjects are involved in your research. The following conditions apply:

- **This Approval**-The research will be conducted according to the most recent version of the protocol that was submitted. **This approval is valid ONLY for the dates listed above;**
- **Reporting**-ORSP must be immediately informed of any injuries to subjects that occur and/or problems that arise, in the course of your research;
- **Modifications**-Any proposed changes **MUST** be submitted to the IRB as an amendment for review and approval prior to implementation;
- **Consent Form(s)**-Each person who signs a consent document will be given a copy of that document, if you are using such documents in your research. The Principal Investigator must retain all signed documents for at least three years after the conclusion of the research;
- **Continuing Review**-You should receive a courtesy e-mail renewal notice for a Request for Continuing Review before the expiration of this project's approval. However, it is your responsibility to ensure that an application for continuing review has been submitted to the IRB for review and approval prior to the expiration date to extend the approval period;

Additional Notes:

- Expedited Approval per 45 CFR 46.110.

Failure to comply with these conditions will result in withdrawal of this approval.

Please note that the IRB has the authority to observe, or have a third party observe, the consent process or the research itself. The Federal-wide Assurance (FWA) number for the Rutgers University IRB is FWA00003913; this number may be requested on funding applications or by collaborators.

Respectfully yours,



Acting For--
Beverly Tepper, Ph.D.
Professor, Department of Food Science
IRB Chair, Arts and Sciences Institutional Review Board
Rutgers, The State University of New Jersey

cc: Roger Kelemen (MW:hb)

Annex D.6 IRB Approved Interview Questions

Attachment #7a Interview questions

Goals of the interview:

- Find out HOW an independent judiciary impacts the level of corruption of a country
- Understand under what conditions can an independent judiciary be adopted / reforms passed?

Questions:

A. Interviewee's role and background

1. What is your current role and position?
2. What was your role in the process of previous judicial reforms discussed and/or adopted by the parliament?

B. Questions on political corruption in the country

1. How important is the problem of political corruption in your country after accession in the European Union?
2. What forms does political corruption take in your country? Which are predominant and have you witnessed any changes since accession?

C. Questions on the independence of the judiciary

1. What do you think is the overall role of the judiciary as a monitoring and oversight institution?
2. How effective do you think is the judiciary at accomplishing its constitutional tasks?
3. How independent do you think is the judiciary as a branch of government? How about the judges?
4. What makes the judiciary / judges (in)dependent in your country?
5. What are the problems that the judiciary in your country experience?

D. Questions on the relationship between an independent judiciary and containment of corruption

1. What role does the judiciary have in helping contain corrupt practices in your country?
2. Why or why not has the judiciary played a more important role in containing corruption?

E. Questions on conditions for institutional reform

1. How was the judicial reform adopted? What factors were important in the case of your country to pass / not to pass judicial reforms?
2. What do you think are the conditions for an effective institutional reform of the judiciary?
3. How much inter-party consensus was there on the need to pass judicial reform?
4. How important do you think is the pro-reform consensus among government coalition partners when passing judicial reform?

F. Questions on testing alternative explanations

1. What role does the media play in containing corrupt practices in your country?
2. What role do civil society organizations play in containing corrupt practices?
3. How effective do you think are the media/CSOs in containing corruption?
Comparative to the judiciary in your country?

Annex D.7 IRB Approved Consent Form

INTERVIEW CONSENT FORM WITH AUDIO RECORDING

You are invited to participate in a research study that is being conducted by **Cristina Gherasimov**, who is a **PhD student** in the Political Science Department, Graduate School New-Brunswick, at Rutgers University. The purpose of this research is to determine how can institutional mechanisms of monitoring and oversight explain anti-corruption performance of a state. It also seeks to elucidate the conditions under which policy-makers conduct institutional reform.

Approximately 80 subjects will participate in this study, and each individual's interview participation will last for approximately 60 minutes. The study procedures include an interview in your official capacity within the limits of your professional position.

This research is confidential. Confidential means that the research records will include some information about you and this information will be stored in such a manner that some linkage between your identity and the response in the research exists. Some of the information collected about you includes your name, official position, and role you had in the implementation of judicial reforms in the past. The records of this study will be kept private. However in any sort of report we make public we may include information that will make it possible to identify you unless you wish the records related to the information provided by you to be kept confidential. Research records will be kept in a locked file; only the researchers will have access to the records.

The Institutional Review Board at Rutgers University and I are the only parties that will be allowed to see the data, except as may be required by law. If a report of this study is published, or the results are presented at a professional conference, only group results will be stated. All study data will be retained indefinitely. If we tape-record the interview, we will destroy the tape after it has been transcribed, which we anticipate will be within three months of its taping.

Risks and benefits: We do not anticipate any risks to you participating in this study other than those encountered in day-to-day life. You are expected to participate in your official capacity within the limits of your professional position. If you say anything that you believe at a later point may be hurtful and/or damage your reputation, then you can ask the interviewer to rewind the recording and record over such information OR you can ask that certain text be removed from the dataset/transcripts. There are no direct benefits to you. However this study is intended to uncover and explain possible weaknesses and strengths of established institutions and potentially, can contribute to adjustment of policy decisions toward better cooperation between neighboring countries.

Participation in this study is voluntary. You may choose not to participate, and you may withdraw at any time during the study procedures without any penalty to you. In addition, you may choose not to answer any questions with which you are not comfortable.

If you have any questions about the study or study procedures, you may contact myself at cgherasi@polisci.rutgers.edu or by phone at +41765373836. You may also contact my faculty advisor Roger D. Kelemen, 89 George St., New Brunswick, dkelemen@polisci.rutgers.edu, +17329321920.

If you have any questions about your rights as a research subject, please contact an IRB Administrator at the Rutgers University, Arts and Sciences IRB:

Institutional Review Board
Rutgers University, the State University of New Jersey
Liberty Plaza / Suite 3200
335 George Street, 3rd Floor
New Brunswick, NJ 08901
Phone: 732-235-9806
Email: humansubjects@orsp.rutgers.edu

You will be given a copy of this consent form for your records.

Sign below if you agree to participate in this research study:

Subject (Print) _____

Subject Signature _____ Date _____

Sign below if you also agree to have the interview tape-recorded:

Subject Signature _____

Principal Investigator Signature _____ Date _____

**ANNEX E. Explaining the Dependent Variable:
State and Evolution of Corruption**

Table E.1: Summary of findings – identified foci of corruption before and after accession

	Before accession (including 1990s)	Post-accession
<i>Anti-Corruption Frontrunners</i>		
Estonia	Law enforcement Local government Public procurement Political parties / financing	Political parties / financing Legislature / lobbying Local government
Poland	State-owned companies Prosecution Political parties / financing Public procurement Public administration Judiciary	State-owned companies Public procurement Political parties / financing
<i>Anti-Corruption Middle Group performers</i>		
Latvia	Legislature / lobbying Judiciary Political parties / financing Public procurement Public administration Off-budget agencies	Legislature / lobbying Public administration
Lithuania	Political parties / financing Law enforcement Public administration Legislature / lobbying Public procurement Judiciary	Law enforcement Local government Legislature / lobbying Public procurement
Slovenia	Legislature / lobbying Law enforcement Local government Public procurement Prosecution	Legislature / lobbying Law enforcement Local government State-owned companies Political parties / financing
<i>Anti-Corruption Backsliders</i>		
Czech Republic	Public administration Legislature / lobbying Political parties / financing Public procurement	Public administration Political parties / financing Public procurement Prosecution Legislature / lobbying
Hungary	Political parties / financing Prosecution Public procurement Public administration	Political parties / financing Legislature / lobbying Law enforcement Public procurement Public administration Prosecution

Slovakia	Judiciary Public administration Law enforcement Legislature / lobbying Prosecution Political parties / financing Public procurement	Judiciary Public administration Law enforcement Prosecution Political parties / financing Public procurement Legislature / lobbying
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Source: author's own elaboration based on comparative analysis of assessment reports

Open Society Institute. *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*. The Accession Monitoring Program, (2002): 69.

European Commission. *Regular Report 2001*.

Freedom House. *Nations in Transit Reports, 2003-2016*.

Public opinions polls.

Figure E.2 Summary of findings of identified foci of corruption before and after accession (aggregated data from Table E.1)

Foci of corruption	Frontrunners				Middle group						Backsliders					
	EST		POL		LIT		LAT		SLO		CZE		SVK		HUN	
	Before	After	Before	After	Before	After	Before	After	Before	After	Before	After	Before	After	Before	After
Public administration																
Legislature																
Judiciary																
Political parties / financing																
Public procurement																
Law enforcement																
Local governments																
Prosecution																
Off-budget agencies / state-owned companies																

Source: author's own elaboration

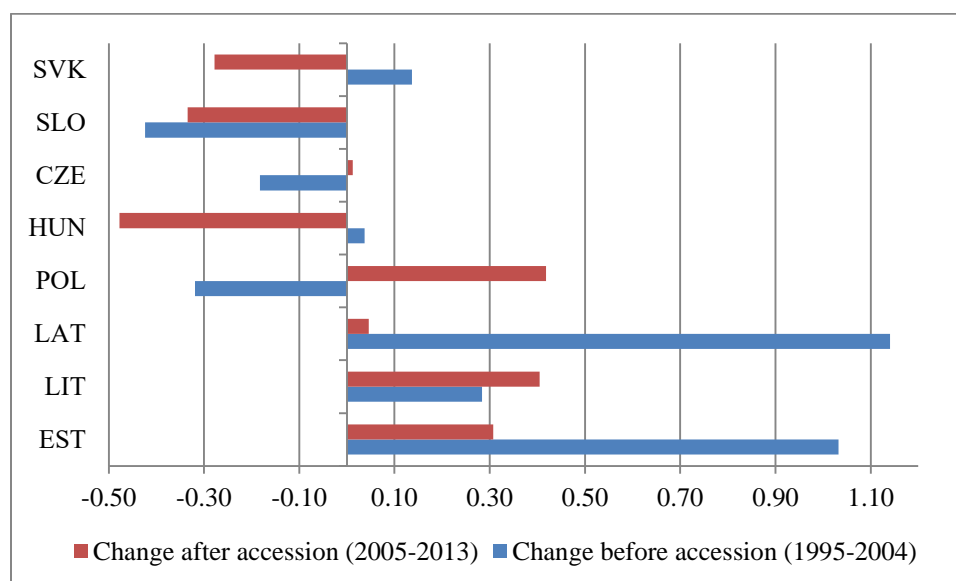
Note: Darker areas mean that for the specific period of time the area was a focus of corruption.

Table E.3 Changes in anti-corruption performance before and after accession

Country	Pre-accession change (1995-2004)	Largest change	Post-accession change (2005-2013)	Largest change
Estonia	1.03	(2) pos.	0.31	(5) pos.
Lithuania	0.28	(5) pos.	0.40	(3) pos.
Latvia	1.14	(1) pos.	0.05	(7) pos.
Poland	-0.32	(4) neg.	0.42	(2) pos.
Hungary	0.04	(8) pos.	-0.48	(1) neg.
Czech Republic	-0.18	(6) neg.	0.01	(8) pos.
Slovenia	-0.42	(3) neg.	-0.33	(4) neg.
Slovakia	0.14	(7) pos.	-0.28	(6) neg.

Source: author's own elaboration, based on Worldwide Governance Indicators (World Bank, 2014)

Figure E.4 Changes in anti-corruption performance before and after accession



Source: author's own elaboration, based on Worldwide Governance Indicators (World Bank, 2014)

ANNEX F.

Case Selection for Nested Analysis Model

Table F.1 Descriptive statistics for DV (control of corruption) and IV (rule of law) and OLS regression results

Descriptive statistics		1995			2004			2014		
		EU28	EU8	EU11	EU28	EU8	EU11	EU28	EU8	EU11
Corrupt	Mean	1	0.31	0.06	1.04	0.52	0.38	0.98	0.52	0.36
	Std. Dev.	1.02	0.63	0.697	0.75	0.29	0.35	0.82	0.36	0.42
	Min	-0.82	-0.82	-0.82	-0.21	0.22	-0.21	-0.31	0.1	-0.31
	Max	2.36	1.31	1.31	2.34	0.97	0.97	2.2	1.25	1.25
Law	Mean	0.99	0.55	0.3	1.06	0.69	0.48	1.13	0.85	0.64
	Std. Dev.	0.7	0.36	0.537	0.62	0.19	0.4	0.66	0.31	0.45
	Min	-0.61	0.03	-0.61	-0.17	0.42	-0.17	-0.12	0.4	-0.12
	Max	1.87	1.04	1.04	1.9	0.92	0.92	2.07	1.32	1.32
OLS regression results										
Rule of Law	Coef.	1.35***	1.53*	1.17***	1.13***	1.28**	0.78***	1.19***	0.99*	0.83***
	Std.Err	0.11	0.37	0.18	0.07	0.35	0.14	0.05	0.25	0.13
	Robust Std.Err	0.09	0.44	0.15	0.08	0.32	0.14	0.05	0.28	0.16
	t-statistic	15.58	3.46	8	15.12	3.98	5.6	22.27	3.52	5.2
	p-value	(<.001)	(.014)	(<.001)	(<.001)	(.007)	(.001)	(<.001)	(.013)	(.001)
Constant	Coef.	-0.34	-0.53	-0.29	-0.16	-0.36	0.003	-0.36	-0.33	-0.18
	Std.Err	0.13	0.23	0.11	0.09	0.24	0.086	0.07	0.23	0.1
	Robust Std.Err	0.13	0.34	0.11	0.09	0.21	0.07	0.07	0.18	0.08
	t-statistic	-2.73	-1.57	-2.73	-1.76	-1.67	0.05	-5.32	-1.85	-2.35
	p-value	(.01)	(.168)	(.023)	(.09)	(.147)	(.96)	(<.001)	(.114)	(.043)
R ²		0.86	0.75	0.81	0.91	0.69	0.77	0.91	0.72	0.82
N		28	8	11	28	8	11	28	8	11

Note: t-statistic and sig. reported based on robust standard errors

Statistical significance: p<.001 (*), p<.05 (**), p<.01 (***)

Data source: World Bank Governance Indicators, data for year 1996, 2005, and 2015

Table F.2 Post-Estimation Regression Diagnostics

Regression diagnostics	Tests and Visual analysis conducted
(a) Homogeneity of residuals	<ul style="list-style-type: none"> ○ Histogram standardized residuals ○ Residual-versus-fitted plot (rvfplot) ○ Standardized residuals plot

	<ul style="list-style-type: none"> ○ Shapiro-Wilk W test for normality of data (swilk)
(b) Unusual and influential data (outliers, leverage)	<ul style="list-style-type: none"> ○ Leverage-versus-squared-residual plot (lvr2plot) ○ Cook's D test measure of influence (cooksD)
(c) Heteroscedasticity	<ul style="list-style-type: none"> ○ Residual-versus-fitted values plot ○ Cameron & Trivedi's decomposition of IM-test (estat imtest) ○ Breusch-Pagan / Cook-Weisberg test (estat hettest)
(d) Model specification	<ul style="list-style-type: none"> ○ Link test for model specification (linktest) ○ Regression specification error test (Ramsey RESET) for omitted variables (ovtest) ○ Testing robustness of standard errors

Source: Wooldridge, 2009.

Table F.3 Summary of diagnostics results tests for all samples

	EU28_96	EU28_05	EU28_15	EU08_96	EU08_05	EU08_15	EU11_96	EU11_05	EU11_15
Shapiro-Wilk	✓	✓	✓	✓	✓	✓*	✓	✓	✓
Cook's D (influential cases)	HRV	MLT, BGR	CZE, HRV	SVK, LVA	-	EST, CZE	SVN	BGR	EST, CZE
Cameron & Trivedi's	✓	✓	✓	✓	✓	✓	✓	✓	✓
Breusch-Pagan / CW	✓	✓	✓	✓	✓	✓*	✓	✓	✓*
Linktest	✓	✗	✗	✓	✓	✓	✓	✓	✓
Ramsey RESET	✓	✓	✓	✓	✓	✓	✓	✓	✓

Notes: Results based on calculations from Appendix A.

Sig. level for all tests $p < 0.05$.

* Sig. level $p < 0.01$.

✓ passed the test

✗ failed the test

Data source: World Bank Governance Indicators, data for year 1996, 2005, and 2015

Table F.4 Case selection crosstab

	<i>Adequate</i> judicial reform (independent judiciary) X=1	<i>Inadequate</i> judicial reform (weak judiciary) X=0
<i>Decreasing or stable</i> level of corruption (Y=1)	<i>Typical cases</i> (positive) Estonia Poland* (<i>borderline case</i>) Slovenia (<i>borderline case</i>)	<i>Puzzling cases</i> Latvia Lithuania* (<i>borderline case</i>)
<i>Increasing</i> level of corruption (Y=0)	<i>Disconfirming cases</i> Hungary*	<i>Typical cases</i> (negative) Czech Republic Slovakia

* “On-the-line” cases as they fit closest to the regression line according to the statistical analysis; smallest residuals in OLS regression

Source: author’s own elaboration based on World Bank Governance Indicators for control of corruption and rule of law and Freedom House Nations in Transit reports, data for 2001-2004

Table F.5 Case selection analysis

<i>State</i>	<i>X₁</i> (<i>Independent judiciary</i> <i>before accession</i>)	<i>Y</i> (<i>decreased or stable level of</i> <i>corruption after accession</i>)
Czech Republic	0	0
Estonia	1	1
Hungary	1	0
Latvia	0	1
Lithuania	0	1
Poland	1	1
Slovakia	0	0
Slovenia	1	1
<i>Typical positive cases: Estonia, Poland, Slovenia</i>		

Source: author’s own elaboration based on World Bank Governance Indicators for control of corruption and rule of law and Freedom House Nations in Transit reports, data for 2001-2004

Table F.6 Summary of categorizations of strength of anti-corruption institutions and judicial independence before accession

Country	Anti-corruption institutions before accession	Judicial independence before accession	Anti-Corruption performance trend after accession
Estonia	Strong	Strong	Improving
Poland	Medium strong	Medium	Improving
Latvia	Medium	Medium strong	Improving
Lithuania	Medium	Medium strong	Improving
Slovenia	Medium	Medium	Stable to declining
Hungary	Medium	Medium strong	Declining
Czech Rep	Weak	Weak	Declining
Slovakia	Weak	Weak	Declining

Note: The categorization of strength of AC institutions is based on the assessment conducted in Chapters 6-8. The categorization of the independence of the judiciary is based on the Freedom House assessment, Nations in Transit, for Judicial Framework and Independence indicator for year 2004.

ANNEX G. Case Selection Nested Analysis Model

Annex G.1 OLS bivariate regression calculations and diagnostics for the nested model analysis case selection based on 3 cross-section samples and 3 periods of time (1995, 2004, 2014)

Summary of regression diagnostics tests

For the EU28 sample for 1995, there is no evidence of heteroskedasticity, influential observations to be addressed, abnormality of residuals, or model misspecification. Yet, Cyprus and Croatia are potential troublesome cases for the regression coefficients. Cyprus is a non-influential outlier (observation with large residual but does not exert undue influence on the regression coefficients). On the other hand, the Cooks D test has revealed Croatia to be case with highest leverage on the model estimations.

For the EU28 sample for 2005, there is no evidence of heteroskedasticity, or abnormality of residuals. The analysis of unusual and influential data shows that Romania and Bulgaria are outliers in this model. Bulgaria and Malta are potential troublesome cases for the regression coefficients since both have been found to be influential cases. This model for 2005 however has not passed the model specification link test, which means that we might have a specification error. The Ramsey RESET test however shows different results, and namely that there is no specification error in our model.

For the EU28 sample for 2015, there is no evidence of heteroskedasticity, or abnormality of residuals. The analysis of unusual and influential data shows that the Czech Republic is an outlier. Bulgaria has been identified as a case with large leverage. But according to the Cook's D test that combines information on the residual and

leverage, Croatia and the Czech Republic are the most influential cases for the regression coefficients. This model for 2015 however has not passed the model specification link test, which means that we might have a specification error. The Ramsey RESET test however shows different results, and namely that there is no specification error in our model.

For EU8, the regression diagnostics tests mostly confirm the goodness of fit for the three samples over time. For the EU8 sample for 1995, there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. The analysis of unusual and influential data shows that Slovakia is an outlier in this model, and together with Latvia, they represent two cases with large influence on the regression estimates. For the EU8 sample for 2004, there is no evidence of heteroskedasticity, influential observations to be addressed, abnormality of residuals, or model misspecification. For the EU8 sample for 2014, there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. It has to be mentioned that the Shapiro-Wilk test for normality of data, as well as the Breusch-Pagan/Cook-Weisberg test for heteroskedasticity are at the margin of significance (sig at .01 but not at .05). Estonia and the Czech Republic are important outliers in this model, and also represent influential cases as per Cook's D test. Considering though the small-N, we are taking the results of this regression with an adequate understanding of its worsening power.

For EU11, the regression diagnostics tests mostly confirm the goodness of fit for the three samples over time. For the EU11 sample for 1995, there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. Latvia in this sample is an outlier, while Croatia an observation with large leverage. Slovenia has been

identified as the case that has large influence on the regression estimates. For the EU11 sample for 2004, there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. Bulgaria has been identified as the case that has large influence on the regression estimates. For the EU11 sample for 2014, there is no evidence of heteroskedasticity, abnormality of residuals, or model misspecification. Estonia and the Czech Republic in this sample are outliers, while Bulgaria an observation with large leverage. Estonia and the Czech Republic have been also identified as the cases that has large influence on the regression estimates.

Sample 1. Regression diagnostics for EU28 sample, year 1995

OLS regression results

Source	SS	df	MS	Number of obs	=	28
Model	24.3614313	1	24.3614313	F(1, 26)	=	155.20
Residual	4.08108946	26	.156964979	Prob > F	=	0.0000
				R-squared	=	0.8565
				Adj R-squared	=	0.8510
Total	28.4425208	27	1.05342669	Root MSE	=	.39619

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.359138	.1090972	12.46	0.000	1.134886	1.583391
_cons	-.345667	.1314306	-2.63	0.014	-.6158265	-.0755076

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	28	0.94569	1.640	1.019	0.15420

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	3.38	2	0.1845
Skewness	0.34	1	0.5584
Kurtosis	0.02	1	0.8756
Total	3.75	4	0.4413

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.46**

Prob > chi2 = **0.4993**

. linktest

Source	SS	df	MS	Number of obs	=	28
Model	24.8237157	2	12.4118578	F(2, 25)	=	85.75
Residual	3.6188051	25	.144752204	Prob > F	=	0.0000
				R-squared	=	0.8728
				Adj R-squared	=	0.8626
Total	28.4425208	27	1.05342669	Root MSE	=	.38046

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.8114793	.1306533	6.21	0.000	.5423937	1.080565
_hatsq	.1417713	.0793317	1.79	0.086	-.0216153	.305158
_cons	-.0766027	.1137956	-0.67	0.507	-.3109692	.1577638

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 23) = **1.02**

Prob > F = **0.4035**

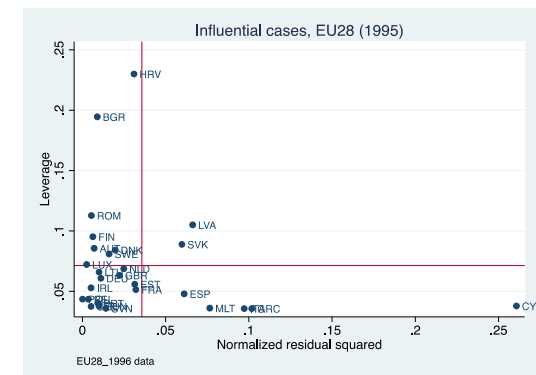
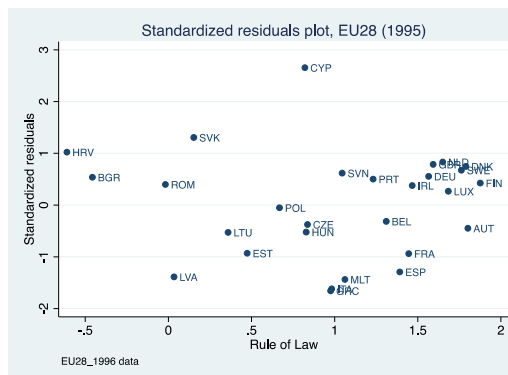
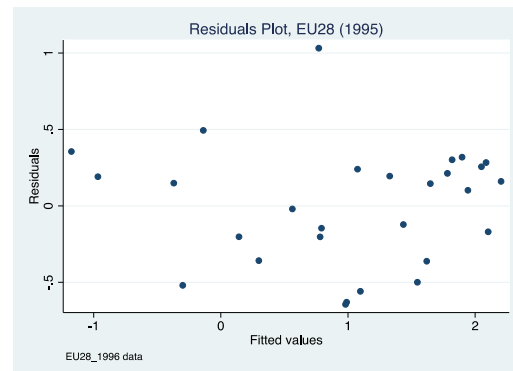
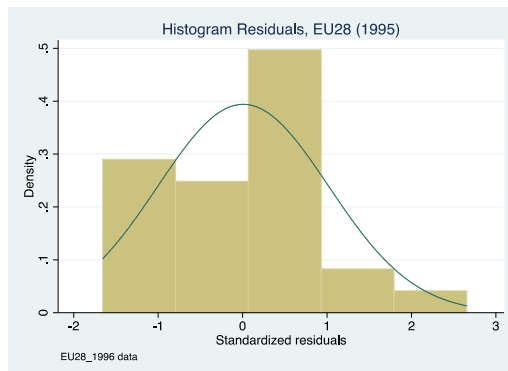
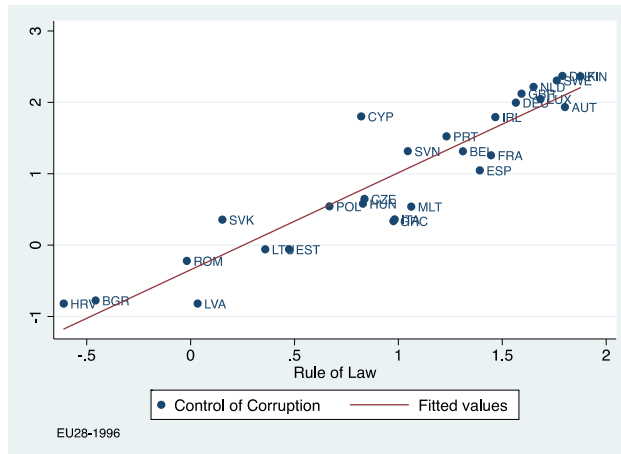
Linear regression, robust standard errors

Linear regression	Number of obs	=	28
	F(1, 26)	=	242.87
	Prob > F	=	0.0000
	R-squared	=	0.8565
	Root MSE	=	.39619

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.359138	.0872122	15.58	0.000	1.179871	1.538406
_cons	-.345667	.1264223	-2.73	0.011	-.6055318	-.0858023

Figures. Sample 1

OLS regression, EU28 (1995)



Source: Author's own elaboration based on World Bank, 1996 World Governance Indicators

Sample 2. Regression diagnostics for EU28 sample, year 2004

OLS regression results

Source	SS	df	MS	Number of obs	=	28
Model	13.8360357	1	13.8360357	F(1, 26)	=	258.08
Residual	1.39389423	26	.053611317	Prob > F	=	0.0000
				R-squared	=	0.9085
				Adj R-squared	=	0.9050
Total	15.2299299	27	.564071478	Root MSE	=	.23154

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.139005	.0709003	16.06	0.000	.9932674	1.284743
_cons	-.1603425	.0869907	-1.84	0.077	-.3391544	.0184694

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	28	0.97164	0.856	-0.319	0.62516

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.00**

Prob > chi2 = **0.9889**

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	0.23	2	0.8903
Skewness	2.54	1	0.1113
Kurtosis	0.01	1	0.9341
Total	2.77	4	0.5962

. linktest

Source	SS	df	MS	Number of obs	=	28
Model	14.203313	2	7.10165648	F(2, 25)	=	172.94
Residual	1.02661696	25	.041064678	Prob > F	=	0.0000
				R-squared	=	0.9326
				Adj R-squared	=	0.9272
Total	15.2299299	27	.564071478	Root MSE	=	.20264

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.5715103	.1532852	3.73	0.001	.2558136	.8872071
_hatsq	.2261243	.0756109	2.99	0.006	.0704007	.3818478
_cons	.0889894	.0748901	1.19	0.246	-.0652497	.2432284

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 23) = **2.84**

Prob > F = **0.0602**

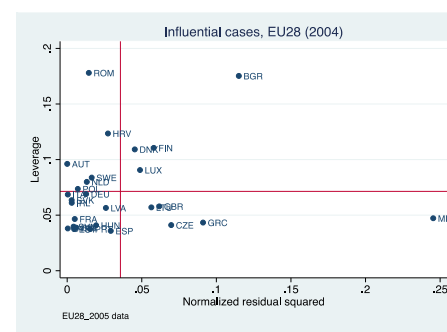
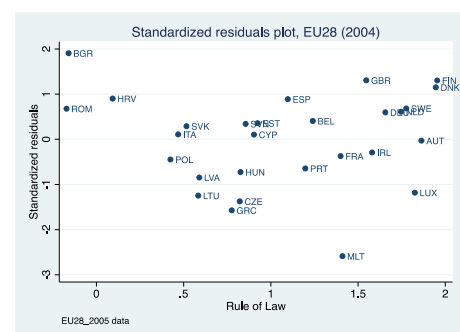
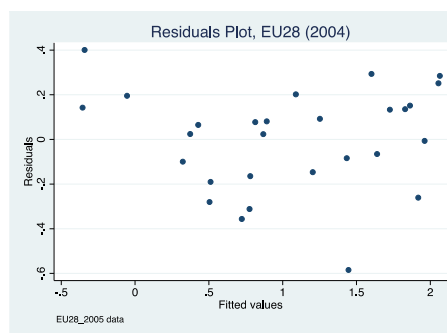
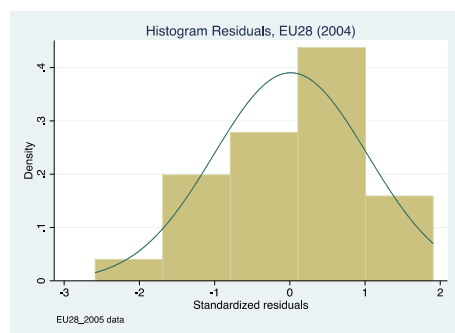
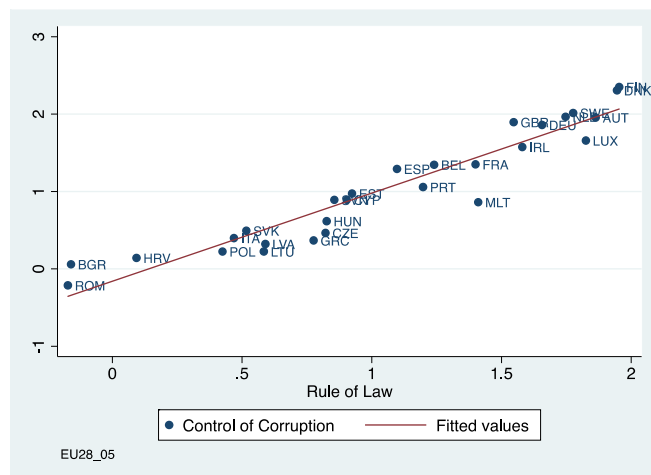
Linear regression, robust standard errors

Linear regression	Number of obs	=	28
	F(1, 26)	=	228.55
	Prob > F	=	0.0000
	R-squared	=	0.9085
	Root MSE	=	.23154

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.139005	.075342	15.12	0.000	.9841373	1.293873
_cons	-.1603425	.090958	-1.76	0.090	-.3473093	.0266243

Figures. Sample 2

OLS regression, EU28 (2004)



Source: Author's own elaboration based on World Bank, 2005 World Governance Indicators

Sample 3. Regression diagnostics for EU28 sample, year 2014

OLS regression results

Source	SS	df	MS	Number of obs	=	28
Model	17.068883	1	17.068883	F(1, 26)	=	418.58
Residual	1.06023663	26	.040778332	Prob > F	=	0.0000
				R-squared	=	0.9415
				Adj R-squared	=	0.9393
Total	18.1291197	27	.671448876	Root MSE	=	.20194

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.191828	.058254	20.46	0.000	1.072085	1.311571
_cons	-.369016	.076382	-4.83	0.000	-.5260214	-.2120105

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	28	0.95457	1.372	0.651	0.25749

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	0.28	2	0.8706
Skewness	1.57	1	0.2105
Kurtosis	0.72	1	0.3948
Total	2.57	4	0.6323

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.06**

Prob > chi2 = **0.8044**

. linktest

Source	SS	df	MS	Number of obs	=	28
Model	17.3344853	2	8.66724264	F(2, 25)	=	272.68
Residual	.794634387	25	.031785375	Prob > F	=	0.0000
				R-squared	=	0.9562
				Adj R-squared	=	0.9527
Total	18.1291197	27	.671448876	Root MSE	=	.17828

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.6796252	.1189345	5.71	0.000	.4346751	.9245753
_hatsq	.1756494	.0607637	2.89	0.008	.0505041	.3007946
_cons	.0380819	.0558056	0.68	0.501	-.076852	.1530158

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 23) = **2.58**

Prob > F = **0.0782**

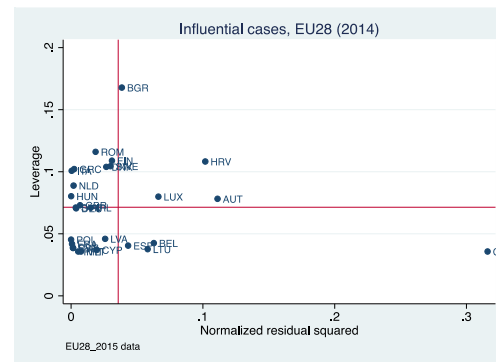
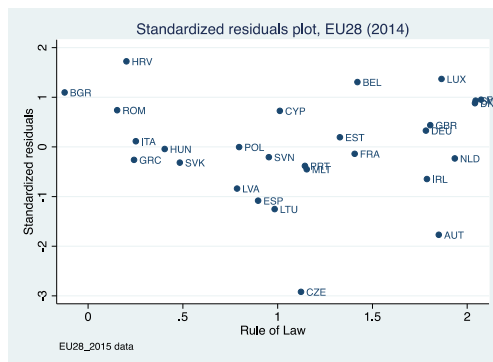
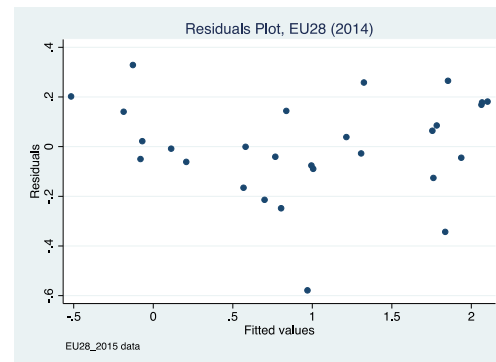
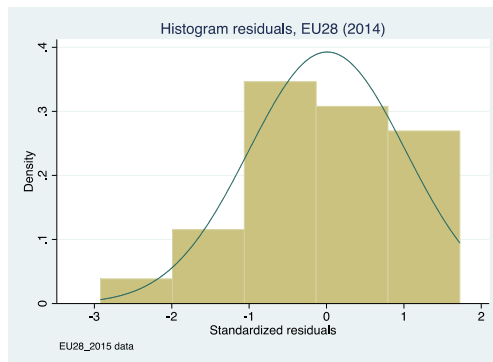
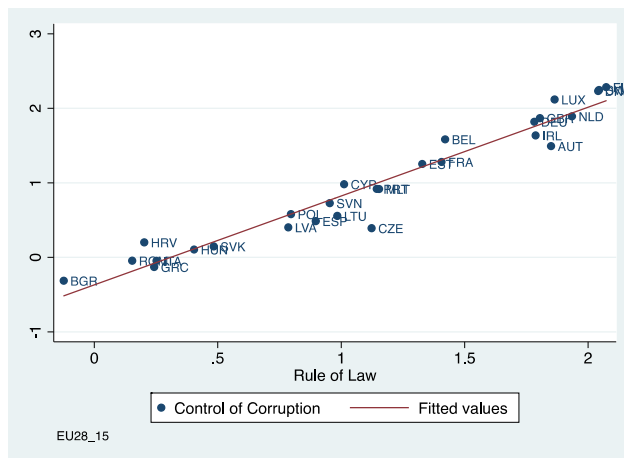
Linear regression, robust standard errors

Linear regression	Number of obs	=	28
	F(1, 26)	=	496.17
	Prob > F	=	0.0000
	R-squared	=	0.9415
	Root MSE	=	.20194

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.191828	.0535057	22.27	0.000	1.081846	1.301811
_cons	-.369016	.0693928	-5.32	0.000	-.5116549	-.2263771

Figures. Sample 3

OLS regression, EU28 (2014)



Source: Author's own elaboration based on World Bank, 2015 World Governance Indicators

Sample 4. Regression diagnostics for EU8 sample, year 1995

OLS regression results

Source	SS	df	MS	Number of obs	=	8
Model	2.08800831	1	2.08800831	F(1, 6)	=	17.58
Residual	.712555415	6	.118759236	Prob > F	=	0.0057
				R-squared	=	0.7456
				Adj R-squared	=	0.7032
Total	2.80056373	7	.400080533	Root MSE	=	.34461

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.53529	.3661492	4.19	0.006	.6393556	2.431225
_cons	-.5319643	.2353586	-2.26	0.065	-1.107866	.0439373

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	8	0.89077	1.522	0.713	0.23791

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	3.11	2	0.2117
Skewness	5.40	1	0.0202
Kurtosis	0.07	1	0.7858
Total	8.58	4	0.0726

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **2.71**

Prob > chi2 = **0.0998**

. linktest

Source	SS	df	MS	Number of obs	=	8
Model	2.11909066	2	1.05954533	F(2, 5)	=	7.77
Residual	.681473065	5	.136294613	Prob > F	=	0.0292
				R-squared	=	0.7567
				Adj R-squared	=	0.6593
Total	2.80056373	7	.400080533	Root MSE	=	.36918

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.8431112	.4161808	2.03	0.099	-.2267157	1.912938
_hatsq	.281437	.5893367	0.48	0.653	-1.233501	1.796375
_cons	-.0519095	.1876758	-0.28	0.793	-.5343455	.4305266

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 3) = **1.47**

Prob > F = **0.3802**

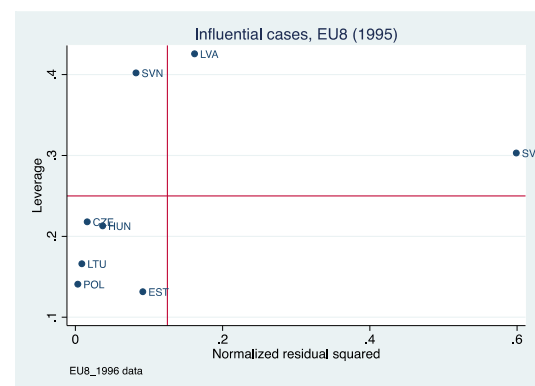
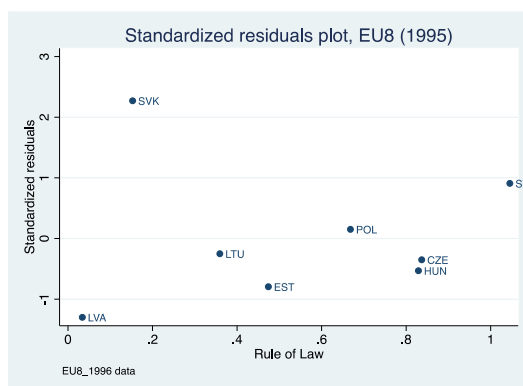
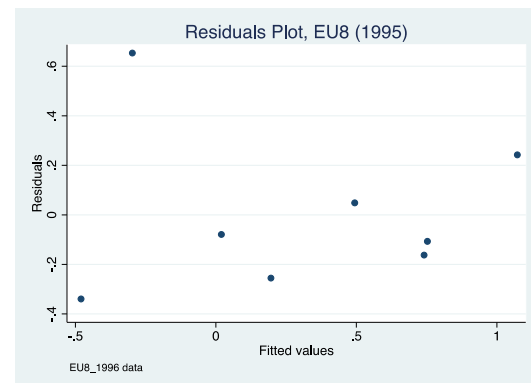
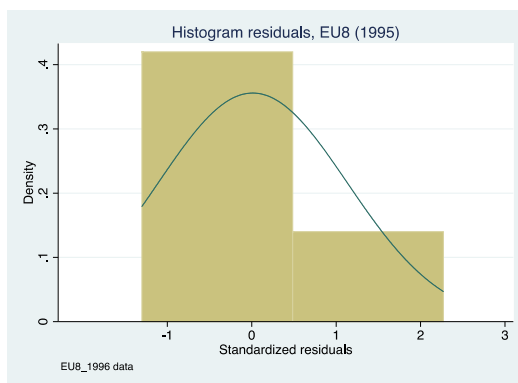
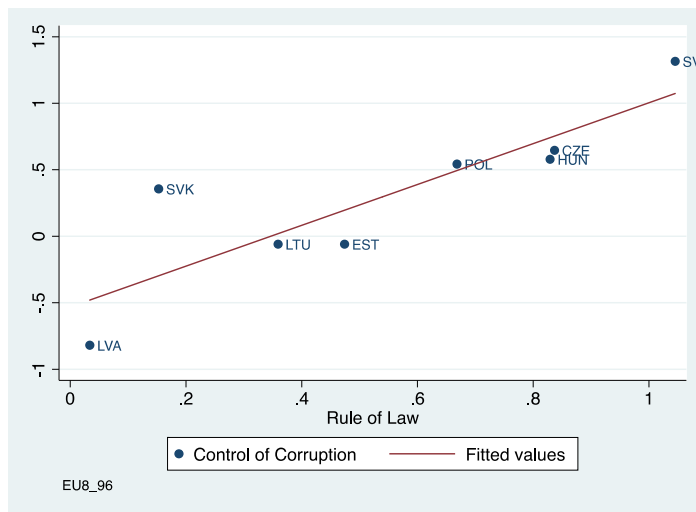
Linear regression, robust standard errors

Linear regression	Number of obs	=	8
	F(1, 6)	=	11.95
	Prob > F	=	0.0135
	R-squared	=	0.7456
	Root MSE	=	.34461

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.53529	.4440618	3.46	0.014	.4487103	2.621871
_cons	-.5319643	.3389189	-1.57	0.168	-1.361269	.2973404

Figures. Sample 4

OLS regression, EU8 (1995)



Source: Author's own elaboration based on World Bank, 1996 World Governance Indicators

Sample 5. Regression diagnostics for EU8 sample, year 2004

OLS regression results

Source	SS	df	MS	Number of obs	=	8
Model	.394930346	1	.394930346	F(1, 6)	=	13.46
Residual	.176004876	6	.029334146	Prob > F	=	0.0105
				R-squared	=	0.6917
				Adj R-squared	=	0.6403
Total	.570935222	7	.081562175	Root MSE	=	.17127

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.283082	.3496881	3.67	0.010	.4274259	2.138738
_cons	-.3631091	.249702	-1.45	0.196	-.9741079	.2478896

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	8	0.91938	1.123	0.190	0.42483

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	1.12	2	0.5716
Skewness	0.17	1	0.6822
Kurtosis	1.75	1	0.1854
Total	3.04	4	0.5512

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.17**
 Prob > chi2 = **0.6780**

. linktest

Source	SS	df	MS	Number of obs	=	8
Model	.450357935	2	.225178968	F(2, 5)	=	9.34
Residual	.120577287	5	.024115457	Prob > F	=	0.0205
				R-squared	=	0.7888
				Adj R-squared	=	0.7043
Total	.570935222	7	.081562175	Root MSE	=	.15529

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	-1.57368	1.715506	-0.92	0.401	-5.98353	2.836169
_hatsq	2.524228	1.664997	1.52	0.190	-1.755782	6.804238
_cons	.5307708	.3774427	1.41	0.219	-.4394764	1.501018

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 3) = **4.22**

Prob > F = **0.1338**

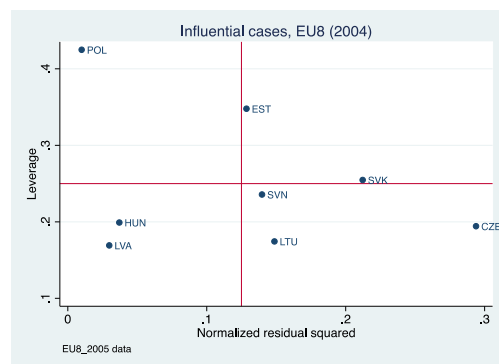
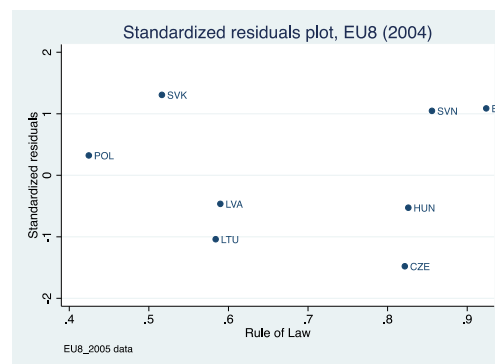
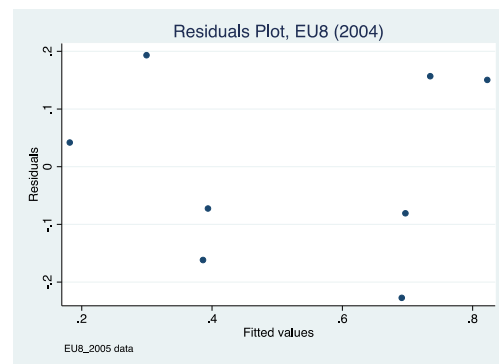
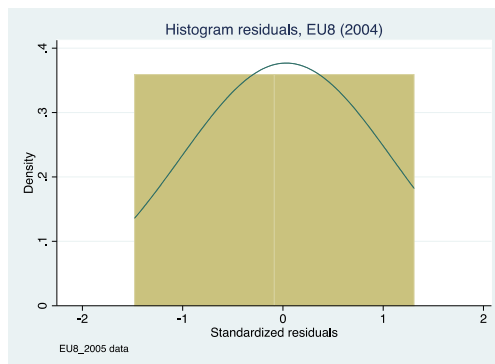
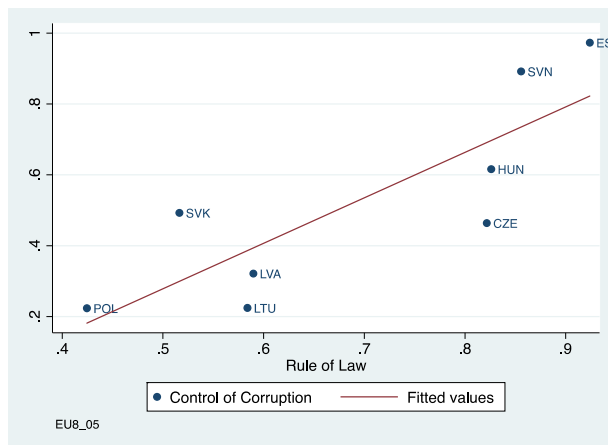
Linear regression, robust standard errors

Linear regression	Number of obs	=	8
	F(1, 6)	=	15.82
	Prob > F	=	0.0073
	R-squared	=	0.6917
	Root MSE	=	.17127

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.283082	.322616	3.98	0.007	.493669	2.072495
_cons	-.3631091	.2180041	-1.67	0.147	-.896546	.1703277

Figures. Sample 5

OLS regression, EU8 (2004)



Source: Author's own elaboration based on World Bank, 2005 World Governance Indicators

Sample 6. Regression diagnostics for EU8 sample, year 2014

OLS regression results

Source	SS	df	MS	Number of obs	=	8
Model	.664565425	1	.664565425	F(1, 6)	=	15.16
Residual	.263050774	6	.043841796	Prob > F	=	0.0080
				R-squared	=	0.7164
				Adj R-squared	=	0.6692
Total	.9276162	7	.1325166	Root MSE	=	.20938

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.9946069	.2554623	3.89	0.008	.3695133	1.619701
_cons	-.3330832	.2312233	-1.44	0.200	-.8988663	.2326998

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	8	0.92895	0.990	-0.017	0.50658

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	3.55	2	0.1691
Skewness	2.72	1	0.0993
Kurtosis	0.15	1	0.7034
Total	6.42	4	0.1701

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **3.84**

Prob > chi2 = **0.0502**

. linktest

Source	SS	df	MS	Number of obs	=	8
Model	.688517867	2	.344258933	F(2, 5)	=	7.20
Residual	.239098333	5	.047819667	Prob > F	=	0.0337
				R-squared	=	0.7422
				Adj R-squared	=	0.6391
Total	.9276162	7	.1325166	Root MSE	=	.21868

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.3510669	.9553462	0.37	0.728	-2.104729	2.806862
_hatsq	.6424367	.9077341	0.71	0.511	-1.690968	2.975842
_cons	.1103671	.2230146	0.49	0.642	-.4629101	.6836443

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 3) = **3.26**

Prob > F = **0.1790**

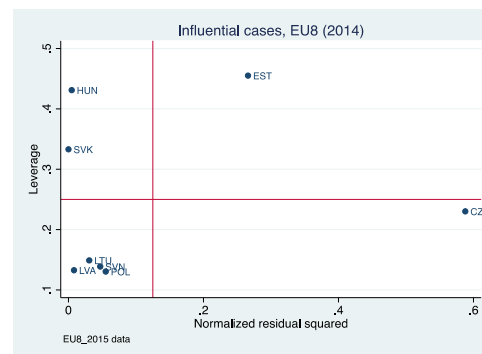
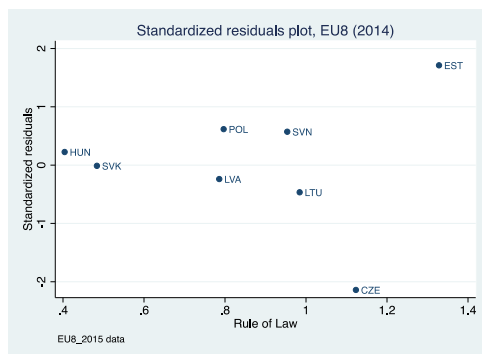
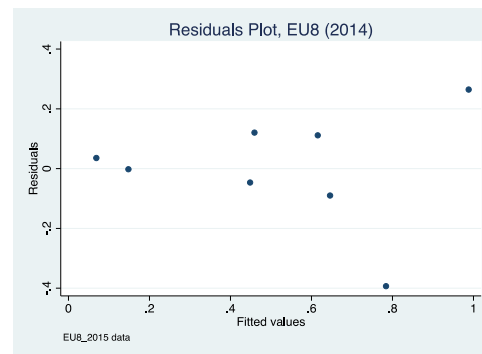
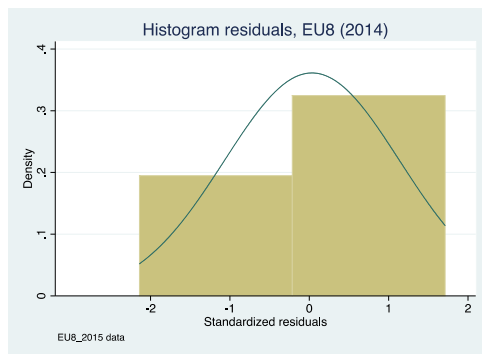
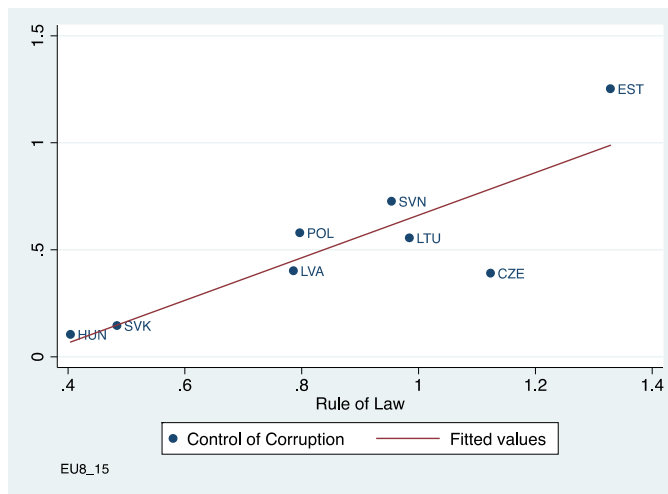
Linear regression, robust standard errors

Linear regression	Number of obs	=	8
	F(1, 6)	=	12.40
	Prob > F	=	0.0125
	R-squared	=	0.7164
	Root MSE	=	.20938

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.9946069	.2824615	3.52	0.013	.3034485	1.685765
_cons	-.3330832	.1799523	-1.85	0.114	-.7734107	.1072442

Figures. Sample 6

OLS regression, EU8 (2014)



Source: Author's own elaboration based on World Bank, 2015 World Governance Indicators

Sample 7. Regression diagnostics for EU11 sample, year 1995**OLS regression results**

Source	SS	df	MS	Number of obs	=	11
Model	3.97268843	1	3.97268843	F(1, 9)	=	40.23
Residual	.88871017	9	.098745574	Prob > F	=	0.0001
				R-squared	=	0.8172
				Adj R-squared	=	0.7969
Total	4.8613986	10	.48613986	Root MSE	=	.31424

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.172738	.1848918	6.34	0.000	.7544838	1.590992
_cons	-.2913217	.1099106	-2.65	0.026	-.5399569	-.0426866

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	11	0.98059	0.314	-1.871	0.96935

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	1.14	2	0.5646
Skewness	1.80	1	0.1797
Kurtosis	0.15	1	0.6963
Total	3.10	4	0.5419

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.01**Prob > chi2 = **0.9182**

. linktest

Source	SS	df	MS	Number of obs	=	11
Model	4.13219067	2	2.06609534	F(2, 8)	=	22.67
Residual	.729207927	8	.091150991	Prob > F	=	0.0005
				R-squared	=	0.8500
				Adj R-squared	=	0.8125
Total	4.8613986	10	.48613986	Root MSE	=	.30191

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	1.025059	.1526541	6.71	0.000	.6730382	1.37708
_hatsq	.3510933	.2654116	1.32	0.222	-.2609469	.9631334
_cons	-.1297039	.1341218	-0.97	0.362	-.4389895	.1795816

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 6) = **0.73**

Prob > F = **0.5713**

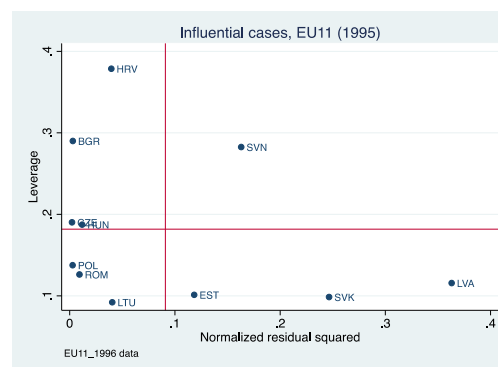
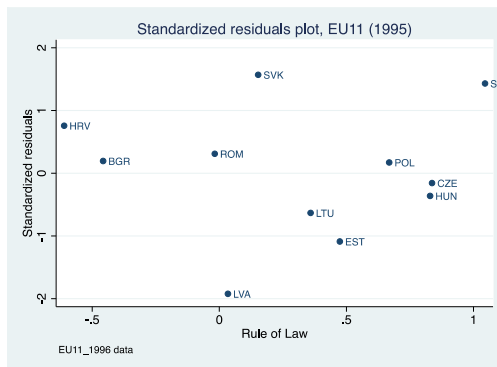
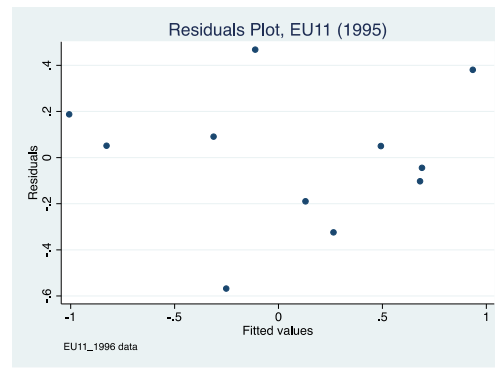
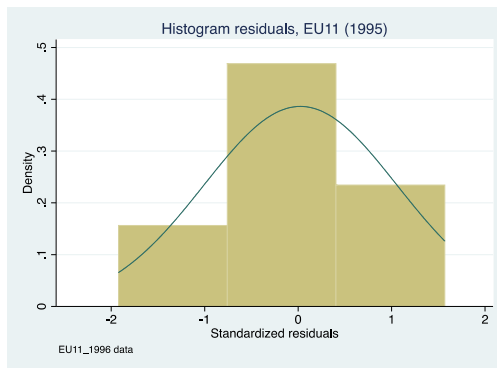
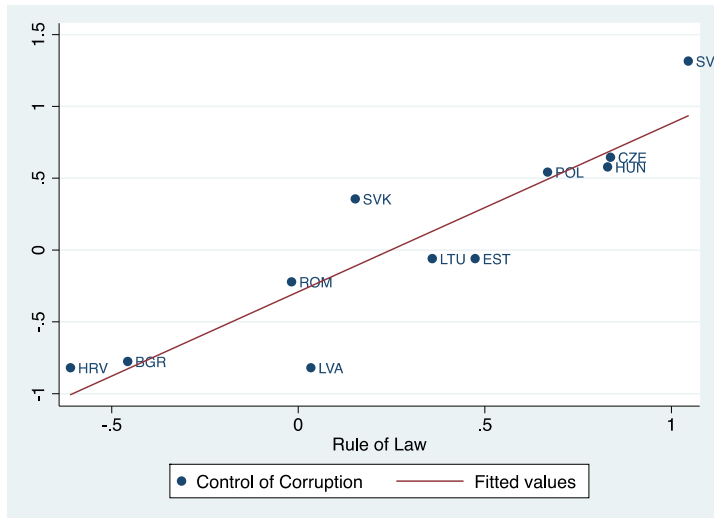
Linear regression, robust standard errors

Linear regression	Number of obs	=	11
	F(1, 9)	=	63.96
	Prob > F	=	0.0000
	R-squared	=	0.8172
	Root MSE	=	.31424

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	1.172738	.1466343	8.00	0.000	.8410282	1.504448
_cons	-.2913217	.1067308	-2.73	0.023	-.5327635	-.04988

Figures. Sample 7

OLS regression, EU11 (1995)



Source: Author's own elaboration based on World Bank, 1996 World Governance Indicators

Sample 8. Regression diagnostics for EU11 sample, year 2004**OLS regression results**

Source	SS	df	MS	Number of obs	=	11
Model	.970822076	1	.970822076	F(1, 9)	=	30.92
Residual	.282622206	9	.031402467	Prob > F	=	0.0004
				R-squared	=	0.7745
				Adj R-squared	=	0.7495
Total	1.25344428	10	.125344428	Root MSE	=	.17721

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.7826842	.1407663	5.56	0.000	.4642488	1.10112
_cons	.0036827	.0863851	0.04	0.967	-.1917339	.1990993

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	11	0.93810	1.002	0.004	0.49844

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	3.21	2	0.2012
Skewness	0.32	1	0.5736
Kurtosis	1.90	1	0.1679
Total	5.43	4	0.2464

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **0.65**Prob > chi2 = **0.4197**

. linktest

Source	SS	df	MS	Number of obs	=	11
Model	1.03855363	2	.519276813	F(2, 8)	=	19.33
Residual	.214890655	8	.026861332	Prob > F	=	0.0009
				R-squared	=	0.8286
				Adj R-squared	=	0.7857
Total	1.25344428	10	.125344428	Root MSE	=	.16389

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.3476246	.44323	0.78	0.455	-.6744656	1.369715
_hatsq	1.137456	.7163128	1.59	0.151	-.5143645	2.789276
_cons	-.0169693	.0810847	-0.21	0.839	-.203951	.1700124

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 6) = **2.08**

Prob > F = **0.2039**

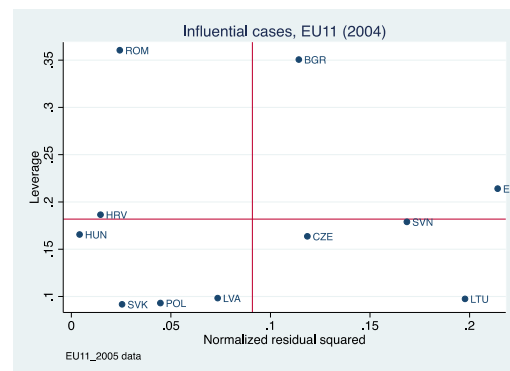
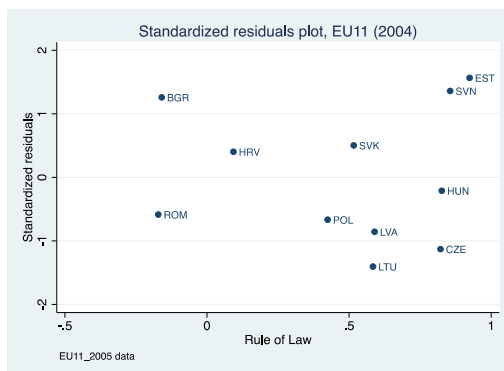
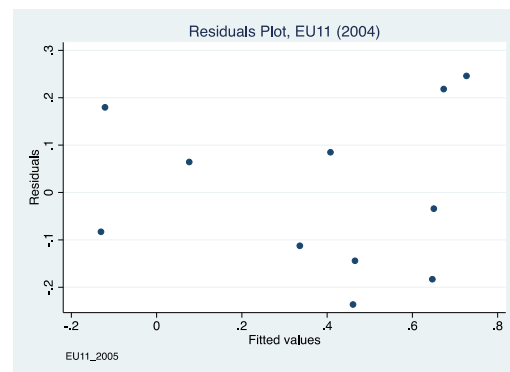
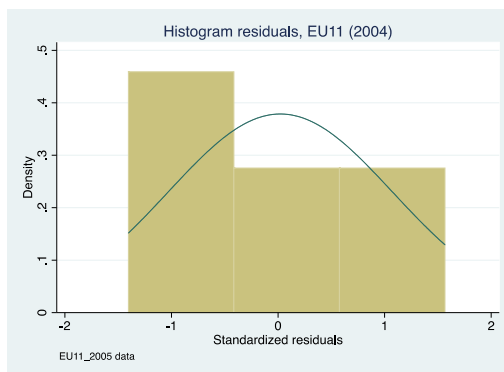
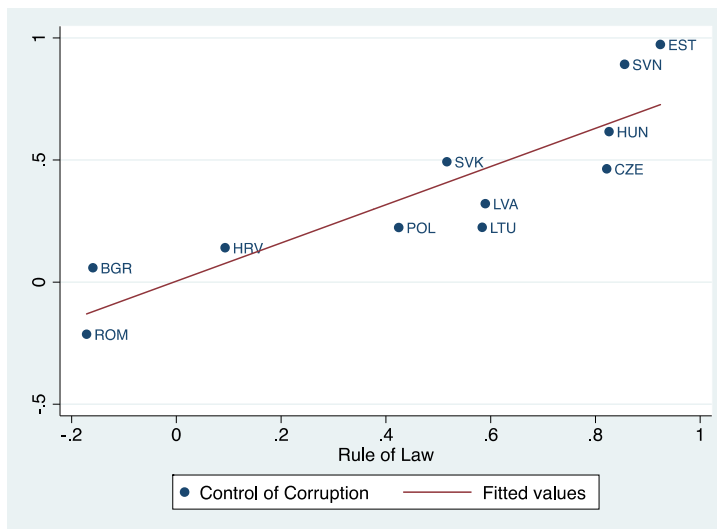
Linear regression, robust standard errors

Linear regression	Number of obs	=	11
	F(1, 9)	=	31.33
	Prob > F	=	0.0003
	R-squared	=	0.7745
	Root MSE	=	.17721

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.7826842	.1398271	5.60	0.000	.4663733	1.098995
_cons	.0036827	.0700368	0.05	0.959	-.1547516	.162117

Figures. Sample 8

OLS regression, EU11 (2004)



Source: Author's own elaboration based on World Bank, 2005 World Governance Indicators

Sample 9. Regression diagnostics for EU11 sample, year 2014**OLS regression results**

Source	SS	df	MS	Number of obs	=	11
Model	1.44912716	1	1.44912716	F(1, 9)	=	39.79
Residual	.327783284	9	.036420365	Prob > F	=	0.0001
				R-squared	=	0.8155
				Adj R-squared	=	0.7950
Total	1.77691045	10	.177691045	Root MSE	=	.19084

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.8383552	.1329067	6.31	0.000	.5376993	1.139011
_cons	-.1769985	.1032115	-1.71	0.121	-.4104791	.0564821

Shapiro-Wilk W test for normal data

Variable	Obs	W	V	z	Prob>z
residual	11	0.94465	0.896	-0.193	0.57664

Cameron & Trivedi's decomposition of IM-test

Source	chi2	df	p
Heteroskedasticity	5.85	2	0.0538
Skewness	0.55	1	0.4595
Kurtosis	0.08	1	0.7745
Total	6.48	4	0.1663

Breusch-Pagan / Cook-Weisberg test for heteroskedasticity

Ho: Constant variance

Variables: fitted values of V5

chi2(1) = **4.04**Prob > chi2 = **0.0445**

. linktest

Source	SS	df	MS	Number of obs	=	11
Model	1.46678107	2	.733390537	F(2, 8)	=	18.92
Residual	.310129373	8	.038766172	Prob > F	=	0.0009
				R-squared	=	0.8255
				Adj R-squared	=	0.7818
Total	1.77691045	10	.177691045	Root MSE	=	.19689

V5	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
_hat	.7880039	.3541752	2.22	0.057	-.0287255	1.604733
_hatsq	.3228867	.4784714	0.67	0.519	-.7804704	1.426244
_cons	-.0081394	.0848765	-0.10	0.926	-.2038649	.187586

Ramsey RESET test using powers of the fitted values of V5

Ho: model has no omitted variables

F(3, 6) = **0.91**

Prob > F = **0.4919**

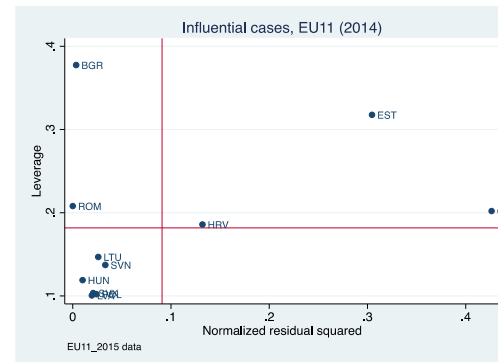
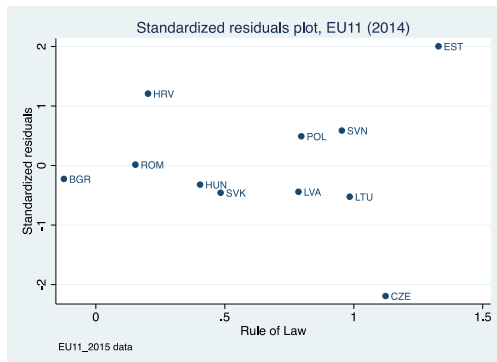
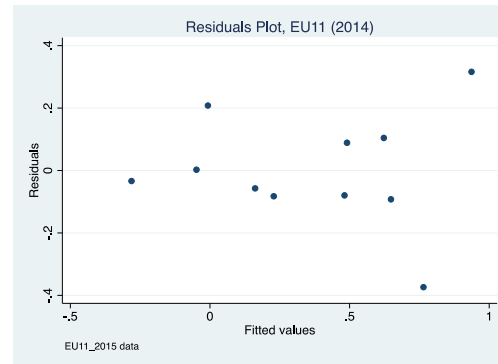
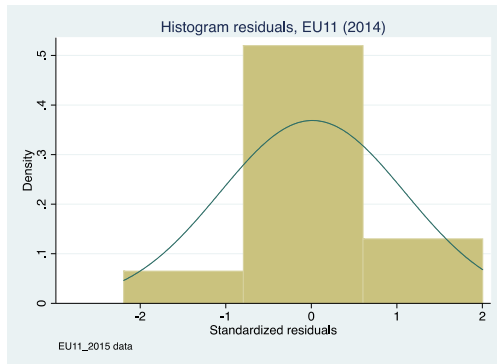
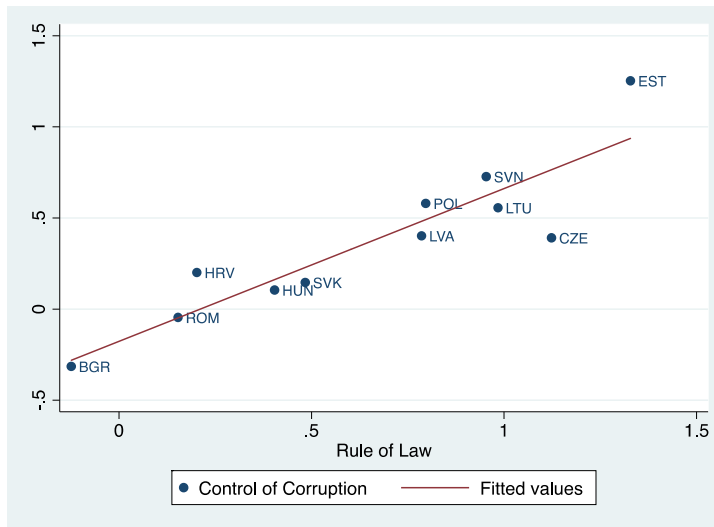
OLS regression results, robust standard errors

Linear regression	Number of obs	=	11
	F(1, 9)	=	27.01
	Prob > F	=	0.0006
	R-squared	=	0.8155
	Root MSE	=	.19084

V5	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
V6	.8383552	.1613172	5.20	0.001	.4734304	1.20328
_cons	-.1769985	.0753638	-2.35	0.043	-.3474833	-.0065137

Figures. Sample 9

OLS regression, EU11 (2014)



Source: Author's own elaboration based on World Bank, 2015 World Governance Indicators

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