

The 2017 Anticorruption Protests in Romania Causes, Mechanisms, and Consequences

Gergana Dimova

Abstract

The essay analyzes the 2017 anticorruption protests in Romania by implementing and complementing the scholarship on political opportunity structures and civil mobilization. It argues that corruption allegations and corruption investigations are inherently open to politicization and shrouded in uncertainty, which substantially raises the cost of understanding the corruption milieu. This uncertainty arises because (1) it is hard to establish whether the corruption act has occurred; (2) there is no agreement how to ensure the independence of the prosecutor; (3) there is lack of clarity concerning who can strip alleged officials of immunity, and (4) it is unclear how information collected by the secret service should be utilized. Three elements of the political opportunity structure shaped the cost–benefit calculus of potential protesters in Romania in 2017 and served as “virtual markers” of certainty. The dual executive standoff between the president and the government raised the benefits of protesting, while the communist cleavage and the outspoken personalities of Presidents Basescu and Iohannis served as virtual markers of certainty that decreased the cost of figuring out the complex corruption narrative and spurred the protests.

Keywords: Corruption, political opportunity structures, prosecutor, protests, Romania, uncertainty.

The 2017 anticorruption protests in Romania constituted the largest and most powerful civil expression of dissatisfaction with corruption that the country had witnessed since the fall of communism in 1989. The protests erupted in January 2017 in reaction to the government’s proposal to decriminalize abuses of power involving amounts below £38,000.¹ Within hours of announcing

Gergana Dimova is an Associate Lecturer in Global Politics at the Sydney Democracy Project, University of Winchester, Winchester, Hampshire, England. <Gergana.Dimova@winchester.ac.uk>

¹ Agence France-Press in Bucharest, “Romania Protests Continue Despite Repeal of Corruption Decree,” *Guardian*, February 6, 2017.

the decree, thousands had gathered in Victory Square in the center of the capital, Bucharest. The protests further gathered speed throughout February and continued sporadically during 2017 and 2018. On Sunday of the week in which the controversial law was revealed, about 30,000 people marched to the parliament in Bucharest, while roughly 20,000 held rallies in about seventy cities across the country.² The protesters managed to make the government cancel its draft law.

The essay seeks to answer the question: How can the powerful and public eruption of societal intolerance of corruption be explained? The essay anchors its analysis in the theoretical insights of the literature on “political opportunity structures.”³ In particular, it suggests that there are three elements of political opportunity structures that played a vital role in the 2017 anticorruption protests in Romania: the communist cleavage, the dual executive arrangement, and the clear and expressive positions of influential politicians. To reveal the lasting significance of these factors, and to look for overarching commonalities, parallels are drawn between the 2017 protests and the protests which led to the 2007 and 2012 presidential impeachment referenda.

The essay further complicates the analytical narrative of political opportunity structures by introducing two elements: a cost–benefit analysis and the notion of uncertainty. The cost–benefit analysis refers to the trade-off that protesters face between the cost of taking part in protests and the benefits. It is important to keep track of both the motivations and the discouragements that protesters face, rather than focusing only on the conditions that facilitate protests. Apart from not being one-sided, such a cost–benefit analysis is dynamic as it considers the relative rather than the absolute importance of each factor. The element of uncertainty, as viewed in this essay, suggests that a great degree of uncertainty envelops allegations of and investigations of corruption. This treatment of uncertainty diverges from traditional accounts of situational uncertainty, which is inherent in every situation in which multiple actors with various preferences must react to the particular circumstances. It complements such fundamental uncertainty by highlighting the unreliability of corruption allegations, which by default involve secret activity; thus, finding out the facts is a fraught process.

In addition, there is procedural uncertainty, which stems from the lack of clarity about whether the investigation process is biased or weaponized by a certain political party to fight political opponents. Particularly, there is

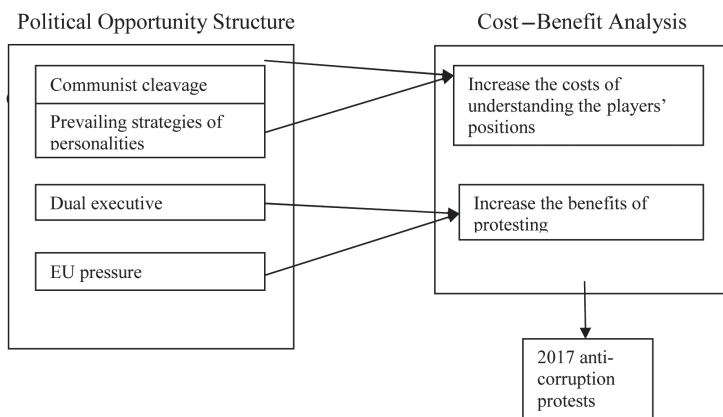
² Daniel Boffey, “Romanians Protest against Weakening of Anti-Corruption Powers,” *Guardian*, November 27, 2017.

³ David S. Meyer and Debra C. Minkoff, “Conceptualizing Political Opportunity,” *Social Forces* 82, no. 4 (2004): 1457-1492; David S. Meyer and Suzanne Staggenborg, “Movements, Countermovements, and the Structure of Political Opportunity,” *American Journal of Sociology* 101, no. 6 (1996): 1628-1660; and Bart Cammaerts, “Protest Logics and the Mediation Opportunity Structure,” *European Journal of Communication* 27, no. 2 (2012): 117-134.

no agreement as to who should appoint the prosecutor, who should make the decision whether to strip office holders of their immunity (so they can be investigated), or how intelligence information ascertaining corrupt acts should be gathered and utilized. Thus, corruption investigations by default are open to claims of politicization, and, consequently, it is very hard for the public to ascertain who is corrupt and who is instrumentalizing corruption allegations. In short, corruption is pervaded by uncertainty, and this uncertainty increases the cost to potential protesters of their assessment of who is corrupt and whether to protest.

Figures 1 and 2 depict how the elements of the political opportunity structures, the cost–benefit analysis, and the notion of uncertainty come together in the present analysis. The first element that decreases uncertainty and decreases the cost of protesting is the communist cleavage. The essay analyzes several aspects of a rough but meaningful equivalency between the fight against communism and the fight against corruption. The communist legacy serves as a virtual marker that positions various players on the corruption and anticorruption chess board. The second condition that decreases uncertainty and decreases the cost of taking part in the protests is the clear position of signature public figures in relation to the corruption charges. Such politicians are Presidents Basescu and Iohannis, as well as the chairman of the Social Democratic Party (PSD), Liviu Dragnea. Finally, the institutional stalemate between the president, on the one hand, and the parliament and the government, on the other hand, raises the benefits of participating in the protests, as it shows that there are two roughly equal voices in the corruption struggle and that protests are influential because they could break the impasse and serve as an arbiter.

Figure 1. Political Opportunity Structures and Cost–Benefit Analysis in the 2017 Romanian Anticorruption Protests



The essay proceeds as follows. First, it zooms in on a particular theoretical model of social movements and explains how the notion of uncertainty as well as a cost–benefit analysis can enrich and complement this analytical account of protests. Second, it discusses why corruption allegations and investigations are vulnerable to charges of politicization, thus greatly increasing the level of uncertainty. This level of uncertainty raises the cost of establishing who is corrupt and, consequently, whether to participate in protests. Third, the essay focuses on the three theoretical elements of the political opportunity structure that help explain the Romanian protests: the dual executive arrangement, the positions of Presidents Klaus and Basescu, and the communist cleavage. The essay concludes by gauging the success and dangers surrounding the Romanian 2017 anticorruption protests as well as the country’s broader fight against high-level corruption.

Overview: Political Opportunity Structures and the Anticorruption Protests in Romania

Using the prism of the 2017–2018 protests in Romania, the essay seeks to implement as well as to complement scholarship on civil protests. It argues that the model of political opportunity structures summarized by Hanspeter Kriesi et al.⁴ has considerable explanatory power in relation to the 2017 anticorruption protests. In particular, Kriesi’s model focuses on three determinants of political opportunity structures: the structures of political institutions, cleavage structures, and prevailing strategies. Given the rich scholarship on political movements, the model presented by Kriesi is highly selective. It prioritizes only a few elements of the political opportunity structures in relation to a wide range of other variables, such as changes in public policy, international alliances, the constraints on state policy, state capacity, and the geographic scope and repressive capacity of governments, to cite just a few conditions.⁵ It also abstracts from protests against economic grievances and global injustice⁶ and from considerations of the role of a free press and social capital.⁷ It should be noted, however, that the pressure from the EU commission to implement anticorruption reforms was a very important factor, particularly prior to the

⁴ Hanspeter Kriesi, ed., *New Social Movements in Western Europe: A Comparative Analysis*, vol. 5 (Minneapolis: University of Minnesota Press, 1995).

⁵ For a comprehensive review of the protest literature, refer to David S. Meyer, “Protest and Political Opportunities,” *Annual Review of Sociology* 30 (2004): 135.

⁶ Isabel Ortiz, Sara Burke, Mohamed Berrada, and Hernán Cortés, “World Protests 2006–2013” (New York: Initiative for Policy Dialogue, 2013), and Donatella Della Porta, “Critical Trust: Social Movements and Democracy in Times of Crisis,” *Cambio. Rivista sulle Trasformazioni Sociali* [Exchange: Journal of Social Transformations] 2, no. 4 (2012): 33–43.

⁷ Alina Mungiu-Pippidi, “Controlling Corruption through Collective Action,” *Journal of Democracy* 24, no. 1 (2013): 101–115.

2007 accession of Romania to the European Union (EU).⁸ Despite its highly selective and succinct nature, Kriesi's model is implemented and adopted, here, as the case study of the Romanian protests has proven well-suited to being explained by such a theoretical framework, as will be demonstrated below.

The essay modifies Kriesi's framework in two main ways: (1) by adding a discussion of a specific type of uncertainty that pervades corruption allegations, and (2) by explaining how the elements of the political opportunity structures outlined by Kriesi change the cost–benefit calculus of protesters. The element of certainty has played a role in other accounts of protests movements. For example, John Jost et al. hypothesize that there is a link between the level of uncertainty and “increasing the salience of uncertainty [which] will lead to decreased rather than increased support for system-challenging protest behaviour.” In their case, the authors single out the psychological uncertainty stemming from disrupting the status quo.⁹ They argue that such uncertainty is generally unsettling, and protesters try to avoid it. Andreas Schedler also envisions the important role of uncertainty as a driver that “constrains actors and forces them to react.”¹⁰ Schedler differentiates between informational and institutional uncertainty. In every situation, there is an inherent situational uncertainty related to what preferences other actors have and which of these preferences they will act upon.

The uncertainty stemming from corruption allegations adds to the mentioned types of uncertainties. This is so because corruption by default is a hidden activity. The facts of corruption are never fully known. There is always a lingering doubt that corruption allegations could be politicized, instrumentalized, and weaponized. Because of this inherent secrecy, it is very costly for the average Romanian to determine whether an office holder is rightly accused. In addition, uncertainty is related to the lack of clear rules explaining when an investigation into corruption allegations is independent or biased. Specifically, there is no scholarly, political, or any other agreement as to what types of procedures regarding the appointment of prosecutors, stripping incumbents of immunity, or using intelligence information guarantee

⁸ Mihaela Ristei, “The Politics of Corruption: Political Will and the Rule of Law in Post-Communist Romania,” *Journal of Communist Studies and Transition Politics* 26, no. 3 (2010): 341-362; Alina Mungiu-Pippidi, “The Good, the Bad and the Ugly: Controlling Corruption in the European Union,” Hertie School of Governance, Berlin, 2013; and Mihaela Ristei Gugiu, “EU Enlargement and Anticorruption: Lessons Learned from Romania,” *Journal of European Integration* 34, no. 5 (2012): 429-446.

⁹ John T. Jost, Vagelis Chaikalis-Petritsis, Dominic Abrams, Jim Sidanius, Jojanneke Van Der Toorn, and Christopher Bratt, “Why Men (and Women) Do and Don't Rebel: Effects of System Justification on Willingness to Protest,” *Personality and Social Psychology Bulletin* 38, no. 2 (2012): 197-208.

¹⁰ Andreas Schedler, *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (Oxford: Oxford University Press, 2013), 21.

an unbiased investigative process. Overall, corruption allegations increase the cost of participating in anticorruption protests.

The second way in which the present analysis modifies and develops Kriesi's analytical framework is by incorporating the cost–benefit calculus. The cost–benefit analysis is introduced, here, because it provides a two-dimensional and interactive account of the constraints and motivations that protesters face. In a way, the cost–benefit analysis mimics the voting paradox.¹¹ Protesting can be costly and offers few tangible benefits.¹² The benefits of protest participation are small because it is hard to gauge how the participation of just one more person would add to the impact of a wide protest. In a way, protesters face the typical free-rider problem, which leads them to prefer that somebody else protests, while they reap the benefits.¹³ While the benefits of protesting are low, the costs are high because protesters must give up other activities, such as work and leisure pursuits.¹⁴

There are several steps in which the present analysis applies the cost–benefit analysis to Kriesi's model of the political opportunity structure in the context of the 2017 anticorruption protests in Romania. It substitutes the terms of the “interaction context” with a cost–benefit analysis. Instead of focusing on repression, reform, threat, and chances of success, it develops a cost–benefit analysis that unpacks the causal mechanisms through which the elements of the political opportunity structure led to the 2017 protests. It argues that the stand-off created by the dual-executive arrangement increased the benefits of participating in the protests, while the post-communist cleavage and the clear positions of influential politicians decreased the cost of participating.

The variable “structures of political institutions” outlined in Kriesi's model relates to the dual-executive nature of the Romanian political system. This dual-executive arrangement refers to the fact that the president is directly elected and that there is a certain legal ambiguity as to the distribution of powers between the prime minister and the president.¹⁵ The essay argues

¹¹ Mark B. Garman and Morton I. Kamien, “The Paradox of Voting: Probability Calculations,” *Behavioral Science* 13, no. 4 (1968): 306-316.

¹² Martijn Van Zomeren and Russell Spears, “Metaphors of Protest: A Classification of Motivations for Collective Action,” *Journal of Social Issues* 65, no. 4 (2009): 661-679; Martijn Van Zomeren, Colin Wayne Leach, and Russell Spears, “Protesters as ‘Passionate Economists’: A Dynamic Dual Pathway Model of Approach Coping with Collective Disadvantage,” *Personality and Social Psychology Review* 16, no. 2 (2012): 180-199; and Jürgen Meyerhoff and Ulf Liebe, “Protest Beliefs in Contingent Valuation: Explaining Their Motivation,” *Ecological Economics* 57, no. 4 (2006): 583-594.

¹³ Anthony R. Oberschall, “Rational Choice in Collective Protests,” *Rationality and Society* 6, no. 1 (1994): 79-100, and Will H. Moore, “Rational Rebels: Overcoming the Free-Rider Problem,” *Political Research Quarterly* 48, no. 2 (1995): 417-454.

¹⁴ *Ibid.*, 79-100.

¹⁵ Sergiu Gherghina and Sergiu Miscoiu, “The Failure of Cohabitation: Explaining the 2007 and 2012 Institutional Crises in Romania,” *East European Politics and Societies* 27, no. 4 (2013): 668-684, and Thomas Herzfeld and Christoph Weiss, “Corruption and Legal (In)Effectiveness: An Empirical Investigation,” *European Journal of Political Economy* 19, no. 3 (2003): 621-632.

that this structure of the political institutions has created repeated stand-offs between presidential and governmental executives, and that such impasse has vastly increased the benefits of supporting one side or the other. The benefits of participating increase in a critical situation with roughly similar distribution of power because potential protesters may think that they can tip the balance of power. Protests allow the president, on the one hand, and parliament or the government, on the other hand, to claim popular support.

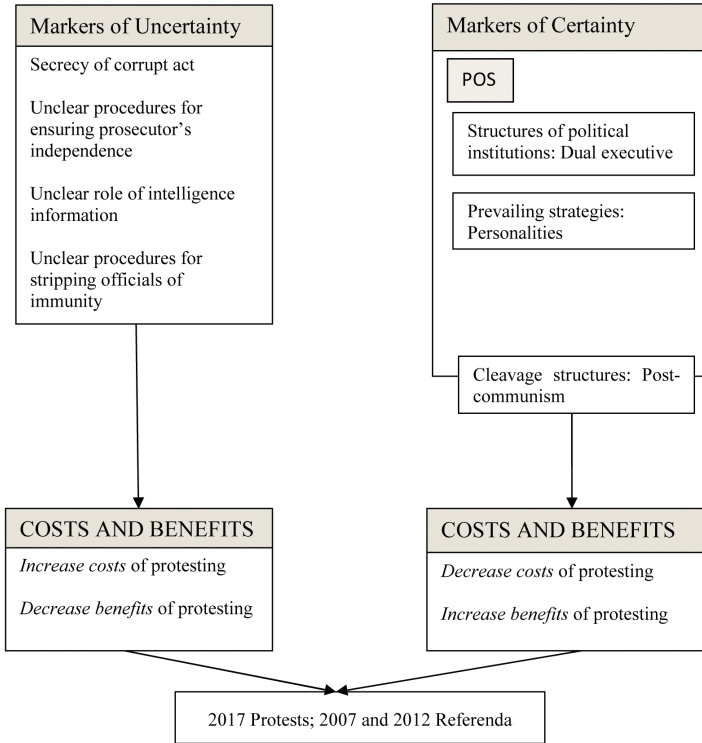
Developing Kriesi's model further, the essay conjectures that the communist cleavage is an important manifestation of the "cleavage structure" and that the clear positions of influential politicians are a manifestation of "prevailing strategies." Taken together, the communist cleavage and the clear positions of popular politicians decrease the cost of participating in protests. This is so because these two elements of the political opportunity structure serve as markers of certainty, which indicate who is thought to have ulterior motives behind rescinding the corruption law. The colorful or expressive personalities of leaders such as President Basescu and President Iohannis decrease uncertainty inherent in the corruption context. Even if a potential protester cannot determine whether a politician is corrupt, the protester is more likely to have a position if a politician favored by him or her has expressed a public stand on the subject. Public positions cut the cost of sorting through the complicated corruption context and the mutual assertions of politicizing corruption allegations. The communist cleavage also decreases uncertainty because, to simplify the narrative greatly, there is an understanding which suggests that the former communist party, PSD, is believed to be largely the target of such allegations, and a reversal of the anticorruption process is perceived as a return to communism.

Uncertainty and Secrecy of Corruption Allegations

Uncertainty pervades the fight against corruption. It is extremely hard for Romanians, or indeed any country's citizenry, to judge the veracity of corruption charges. At the bottom of this uncertainty is the very nature of corruption, which by definition is a "hidden activity"; thus, a lengthy and fraught process of establishing the facts is always necessary. Unlike unemployment or inflation, for example, which is calculated according to a mathematical formula that utilizes commonly accessible information, corruption is engulfed in secrecy. The hidden nature of corruption charges leaves open two opportunities: to fabricate the charges, and to argue that even proven charges are instrumentalized by the political opposition. The most common suspicion surrounding corruption charges is that they are used to shame or blackmail a person of power so that he or she resigns or embarks on a course of policy. Examples of politicizing justice under the pretext of corruption abound.

For example, on June 9, 2018, around 150,000 people cheered the chairman of the PSD, Liviu Dragnea, who argued that prosecutorial investigations are

Figure 2. Romanian 2017 Anticorruption Protests: Implementation and Complementing Kriesi's Framework



corrupt and fabricated. He said: “It doesn’t even matter if you’re guilty or not... . The corrupt prosecutors are still here... . You’ve seen them on TV fabricating cases, falsifying statements. You’ve heard them threatening witnesses.”¹⁶ The “constitutional court” was “labeled a ‘political court’” and it was believed that “prosecutors decide[d] who [won] elections.”¹⁷ At the same time, others argued that Dragnea had been trying to smear the prosecutors because, just ten days after he made these allegations, he received a prison sentence of seven and a half years for fraudulently placing his acquaintances on the state payroll. Thus, to make matters even more complicated, it is argued that the allegations of politicizing investigations are politicized: “No one is spelling it out like that, but it appears as if the PSD wants to save its

¹⁶ Ioana Burtea, “Divide and Conquer: How Romania Lost the War on Corruption,” *Balkan Insight*, December 6, 2018.

¹⁷ Alina Mungiu-Pippidi, “Romania’s Italian-Style Anticorruption Populism,” *Journal of Democracy* 29, no. 3 (2018): 104-116.

own members [from the possibility of corruption investigations].”¹⁸ Hence, the entire climate of corruption allegations and investigations is particularly open to politicization and instrumentalization, vastly increasing the level of uncertainty. It is because of this level of uncertainty that the elements of the political opportunity structures are so effective in defining the costs and benefits of protests in particular ways. In an environment of ambiguity and contentious politics, monikers of certainty enabling orientation acquire particular significance.

Uncertainty and the Investigation of Corruption Allegations

Claims that the prosecutor is biased are easy to make and hard to dismiss. These efforts at politicization greatly increase uncertainty and make it very costly for the public to assess who is right. The dismissals of two leading anticorruption figures were greatly politicized in Romania: the dismissal of Justice Minister Monica Macovei, who was a bone of contention, giving rise to the 2007 constitutional crisis, and the dismissal of Prosecutor Laura Kovesi, which constituted the seeds of conflict that led to the 2017 protests. Macovei’s dismissal sparked many and highly divergent views, which complicated the corruption narrative. Those who argued that her dismissal was a political hit job pointed out that the timing looked suspicious: she was dismissed just weeks after Romania became a member of the EU, which made a point of judging Romania based on its anticorruption efforts. As soon as the EU membership was a fact, the Romanian parliament moved to dismiss the justice minister. Macovei, in turn, defended herself by suggesting that she was dismissed by people who felt threatened by her investigations.¹⁹ On the other hand, uncertainty was rife as parliament and the senate criticized her for “discrediting the legislative work which is being done.”²⁰ To increase the level of uncertainty and confusion even more, others argued that Macovei was simply the darling of the EU, which sought as many convictions as possible and applauded the fact that she was “the first member of civil society to be put in a key position.”²¹ Yet, others accused Macovei of being a Soros-aligned activist. Allegations that Macovei and Soros Foundation Council president, Renate Weber, “were so well-connected with one another through Soros-related NGOs that they even rode together to their first day of work in the Romanian capital”²² added to the confusion about the independence of the anticorruption investigations.

¹⁸ Burtea, “Divide and Conquer.”

¹⁹ Matthew Brunwasser, “Crusading Justice Minister Is Excluded from Romania Cabinet,” *New York Times*, April 3, 2007.

²⁰ Ibid.

²¹ Andreea Flintoaca-Cojoclea, “The Fight against High-Level Corruption in Romania: How Efficient Was Europeanization in Reducing Corruption?” (Ph.D. Diss., University of Louvain, Belgium, 2012–2013), https://www.academia.edu/5763924/The_fight_against_high-level_corruption_in_Romania_how_efficient_was_Europeanization_in_reducing_corruption (accessed June 15, 2019), 168.

²² Jacob Grandstoff, “Soros in Romania” (Washington, DC: Capital Research Center, February 5, 2018).

The very same scenario of mutual allegations and confusion played out in the dispute over the dismissal of Prosecutor Laura Kovesi. Kovesi argued that she was independent because she had taken into account members of all political parties.²³ Although she is favored by the European Commission,²⁴ by Romanian civil society, and by the Romanian president, Klaus Werner Iohannis, Kovesi's critics suggest that she exceeded her authority and damaged Romania's image abroad.²⁵

The justice minister, Tudore Toader, started a procedure for Kovesi's dismissal, presenting a lengthy report allegedly documenting twenty "acts and facts" related to her "authoritarian management style and her involvement in investigations, for trying to get convictions at any price, for the higher number of defendants acquitted following DNA investigations and the higher costs of DNA investigations, and for delaying the investigations in some cases."²⁶ This was approved by the Constitutional Court and signed by the president. Currently, Kovesi herself is on trial for malfeasance, bribery, and perjury. She is accused by a wealthy businessman, Sebastian Ghita, who has fled Romania because of charges of corruption, to have coerced him to pay for the flight of Nicolae Popa from Indonesia to Romania, where he was meant to face trial.²⁷ There is no doubt that such a cloud of allegations increases the public cost of forming an opinion.

The debates about the independence of Justice Minister Macovei and Prosecutor Kovesi are just the tips of the iceberg of the profound uncertainty that underlies corruption investigations, and thus confuses potential protesters. The more fundamental reasons for the politicization of corruption investigations are related to the nature of corruption, the procedure for the appointment of the prosecutor, the procedures for collecting intelligence, and the procedures for lifting the immunity of allegedly corrupt officials. It is unclear whether the prosecutor should be elected by the Supreme Judicial Council, by parliament, by the minister of justice, or by the president. If the prosecutor is elected by

²³ "Romania, Laura Codruta Kovesi, 'DNA Is Not Fabricating Political Files,'" *Regional Anti-Corruption Initiative* (November 11, 2006), <http://www.rai-see.org/laura-codruta-kovesi-dna-is-not-fabricating-political-files/> (accessed June 13, 2019).

²⁴ "Romania's PSD Puts Anti-Corruption Fighter Luara Kovesi on Trial," *DW* (February 15, 2019), <https://www.dw.com/en/romanias-psd-puts-corruption-fighter-laura-kovesi-on-trial/a-47543710> (accessed June 13, 2019).

²⁵ Radu-Sorin Marinus, "Romania's President Removes Chief Anti-Corruption Prosecutor," *Reuters* (July 9, 2018), <https://uk.reuters.com/article/uk-romania-corruption/romanias-president-signs-decree-to-remove-chief-anti-corruption-idUKKBN1JZ0MK> (accessed June 2, 2019).

²⁶ "Romania's Justice Minister Asks for the Dismissal of the Chief Anticorruption Prosecutor," *Romania Insider* (February 22, 2018), <https://www.romania-insider.com/romanias-justice-minister-presents-report-anticorruption-department/> (accessed June 13, 2019).

²⁷ "Romania's PSD Puts Anti-Corruption Fighter Luara Kovesi on Trial," *DW* (February 15, 2019), <https://www.dw.com/en/romanias-psd-puts-corruption-fighter-laura-kovesi-on-trial/a-47543710> (accessed June 13, 2019).

the Supreme Judicial Council, one can argue that the latter is politicized, depending on whether it consists of parliamentary or judicial appointees.

Furthermore, confusion mounts, as the following inquiries are unresolved: Should the prosecutor be elected via a secret ballot or in an open election; should the prosecutor submit reports to parliament, which will increase his democratic credentials but will decrease his neutrality and independence;²⁸ should the prosecutor be directly answerable to the minister of justice (as in Germany) or to the president (as in the United States); should local prosecutors be elected (as in the United States), or should they be civil nonelected servants (as in France and Germany); should there be special training for prosecutors, or is regular juridical education sufficient; how hierarchical should the prosecutorial system be, and how much power should the prosecutor general have in it; should the prosecutorial appointment be lifelong or for a fixed term?

In Romania, the fight over the appointment of the general prosecutor is even more complicated and ambiguous because of the overlap between the president and the government in judicial affairs. The uncertainty arises as the president has the responsibility to nominate the prosecutor, but only on the basis of a proposal submitted by the minister of justice and the Superior Council of the Magistracy. There is a lack of clarity as to the extent to which the president can veto these nominations or, respectively, rubber stamp them. The ambiguity is further exacerbated by the fact that while “the government has no control over prosecutors [it] may interfere in their activities through the way it controls the police force and allocates the public budgets.”²⁹

A brief review of the method for appointing the prosecutorial office, or National Anti-corruption Prosecutor’s Office (NAPO) as it was known, shows that roughly the same arrangements could be both criticized and lauded by the European Commission, depending on the people in charge of the agency. Daniela Ionescu observes that the head of NAPO was appointed by the president and shortlisted by the ministry of justice in 2002, and this arrangement received negative feedback from the European Commission. However, a very similar arrangement, by which the president shortlisted the general prosecutor and the justice minister could dismiss the prosecutor, received praise.³⁰ This juxtaposition demonstrates that there are no hard and fast formal rules guaranteeing the independence of the prosecutor general, and that prosecutorial independence depends on the perceived motivations of the

²⁸ Sara Sun Beale, “Prosecutorial Discretion in Three Systems: Balancing Conflicting Goals and Providing Mechanisms for Control” (2014), SSRN 2433732 (accessed June 13, 2019), and Julia Fionda, “Public Prosecutors and Discretion: A Comparative Study,” *PhilPapers* (1995), <https://philpapers.org/rec/FIOPPA-2> (accessed June 10, 2019).

²⁹ Gherghina and Miscoiu, “The Failure of Cohabitation.”

³⁰ Daniela Ionescu, “Controlling Corruption or Controlling States? EU and Anti-Corruption Policies: The Case of Bulgaria and Romania 2000–2008” (Ph.D. diss., University of Birmingham, Edgbaston, Birmingham, UK, 2017), 196.

people occupying the office, which can be very subjective, even if the European Union is involved. Thus, most prosecutorial investigations are controversial.

Uncertainty and the Secret Service

The relationship between the prosecutorial office and the security service gathering information is of critical importance. It is also undeniably a source of contention, politicization, and uncertainty. To illustrate the absence of formal rules guaranteeing a lack of bias, it should be pointed out that Justice Minister Macovei and Prosecutor Kovesi had radically different approaches to the secret service. Macovei disbanded the justice ministry's own secret service and granted the entire archive containing information obtained by wiretapping judges to a commission of historians studying Securitate (*Departamentul Securității Statului*, or the Department of State Security under the communist regime) files. Macovei's argument was that such service was unnecessary because it collected information "which we do not really know ended up where or with whom."³¹ Yet, Macovei made a choice about who could access these data, as she later asked the panel of scientists, the National College for the Study of the Securitate Archives, to check whether all judges and senior magistrates had collaborated with the communist secret police. In addition, Macovei started to assign cases randomly to judges, allegedly isolating the influence of the former secret police service.

Rather than having spies monitor officials, Macovei established the National Agency for Integrity, which had the power to verify officials' declarations of their assets and also to make them public. She stated that, "If in Romania we file it [a declaration] confidentially in an institution, it's like it does not exist. So I made this public, not only for members of parliament, but also for all judges, prosecutors, customs officers, police, all the staff in all ministries and governmental agencies—about 500,000 people in total."³² The obligation to make asset disclosures public has existed since 2003, but Macovei gave power to the National Integrity Agency to actually verify these declarations and to find out whether conflicts of interest existed.³³

To demonstrate the inherently complicated relationship between intelligence gathering and prosecutorial investigations, it should be noted that Kovesi's approach was radically different from Macovei's. Rather than

³¹ Monica Macovei, "How the Judicial Reform Transformed Romania," *Move.bg* (June 13, 2016), move.bg/how-the-judicial-reform-transformed-romania (accessed May 28, 2019).

³² "Monica Macovei—Fighting Corruption in Romania (and Elsewhere)," *European Stability Initiative* (May 8, 2019), <https://www.esiweb.org/enlargement/?cat=101> (accessed June 13, 2019).

³³ Laura Ștefan, Munir Pârveu, Semptiums Podumlijak, and Cornelia Cozonac, "Conflicts of Interest and Incompatibilities in Eastern Europe: Romania, Croatia, Moldova" (2012), <https://expertforum.ro/wp-content/uploads/2013/03/Conflicts-of-interest-and-incompatibilities-in-Eastern-Europe.-Romania-Croatia-Moldova.pdf> (accessed June 13, 2019).

distancing herself from the secret service, Kovesi signed an undisclosed agreement with the Romanian Intelligence Service, which allowed the National Anticorruption Directorate (DNA) and the procuracy to investigate influential figures.³⁴ The 2017 decriminalization draft law tried to limit this joint work by restricting prosecutors' access to "using wiretaps, CCTV footage or digital evidence." The matter has been truly controversial and some experts are concerned that "these changes could have a devastating impact on criminal investigations because they eliminate the indispensable legal instruments needed to investigate."³⁵ To add to the highly politically charged discourse, some observers have argued that it is "idiocy" to "mix the secret service and the justice system."³⁶ Thus, uncertainty is plenty.

Uncertainty and the Immunity of Public Officials

Lifting the immunity of public officials is one of the thorniest and most contentious issues underpinning the investigative process. The prosecution of former Prime Minister Victor Ponta is quite telling in this respect. In June 2015, the prosecutor's office accused Ponta of forgery of documents, tax evasion, and money laundering committed while he was a lawyer to the energy companies, Turceni and Rovinari.³⁷ The senate refused to lift Ponta's immunity, thus stifling the prosecutorial investigation. The president politicized the refusal to lift the immunity by stating that he "regret[ed] that parliament ha[d] turned into a shield for the protection of an individual, Victor Ponta, who [was] suspected of criminal acts."³⁸ Victor Ponta, in turn, politicized the issue by arguing that he should retain his position to guarantee stability in Romania, which had a key geopolitical position, and that "only Russia will open the champagne bottles if Romania will be in long political crisis."³⁹

To demonstrate how contentious the immunity issue is, it should be noted that President Basescu completed a series of moves to ensure that some

³⁴ "Romanian Intelligence Service Declassifies Cooperation Protocol with Prosecutors," *Romania Insider* (April 2, 2018), <https://www.romania-insider.com/romanian-intelligence-service-protocol-prosecutors-declassified> (accessed June 13, 2019).

³⁵ "Romania Braced for Huge Protests over 'Big Step Backwards' on Rule of Law," *Guardian* (January 19, 2018), <https://www.theguardian.com/world/2018/jan/19/romania-braced-for-huge-protests-amid-big-step-backwards-on-rule-of-law> (accessed June 19, 2019).

³⁶ Ioana Burtea, "Divide and Conquer: How Romania Lost the War on Corruption," *Balkan Insight* (December 6, 2018), <https://balkaninsight.com/2018/12/06/divide-and-conquer-how-romania-lost-the-war-on-corruption-12-05-2018/> (accessed June 13, 2019).

³⁷ "Impartialitate Integrita Eficienta" [Impartiality, integrity, efficiency], National Anti-Corruption Division, Romania (June 5, 2015), <http://www.pna.ro/comunicat.xhtml?id=6362> (accessed June 13, 2019).

³⁸ "Victor Ponta Says He Would Face Court as Romanian MPs Uphold Immunity," *Guardian* (June 9, 2015), <https://www.theguardian.com/world/2015/jun/09/victor-ponta-says-he-would-face-court-as-romanian-mps-uphold-immunity> (accessed June 13, 2019).

³⁹ *Ibid.*

officials were stripped of immunity so that Justice Minister Macovei, whom he appointed, could move on with her investigations. To make certain that the justice minister (rather than the prosecutor) could lift the immunity of some officials, Basescu moved the National Anti-Corruption Office (PNA) from the auspices of the Ministry of Justice to the General Prosecutor's Office. He then renamed the PNA the National Anticorruption Directorate, and placed it under the responsibility of Macovei's Ministry of Justice instead of the Superior Council of Magistracy. This series of maneuvers further boosted the uncertainty pervading the anticorruption fight and increased the cost of understanding it.

Structures of Political Institutions: Dual Executive as an Important Constituent Part of the Political Opportunity Structures

One of the most important underlying structural conditions that has shaped the political opportunity structure in Romania is the semi-presidential regime. The dual-executive arrangement creates conditions for stalemates and stand-offs when the president, who is directly elected, disagrees with the prime minister, who is selected by the majority in parliament. The arrangement forges a degree of uncertainty, which arises from the fact that the president, who has acquired legitimacy of his own through his direct election, can stand up to the prime minister, who enjoys parliamentary support. It is this uncertainty that has created a need for an adjudicator of the conflict, a role which protests have come to fill. Protests or referenda are meant to break the presidential–governmental deadlock.

Another significant consequence of the dual stand-off is that it raises the stakes of participation in protests. The benefits of protesting increase because the distribution of power is almost equal and precarious. Thus, each protesting voice can count more and be more consequential than in cases when the balance of power is tilted significantly in favor of one side. In all significant presidential–prime-ministerial conflicts in 2007, 2012, and 2017, the balance of power was so contentious that it required a third, outside factor to take a stand. In 2007 and 2012, it was a referendum, and in 2017, it was the anticorruption protests that broke the deadlock. In a search to reveal the lasting significance of the institutional set-up, the commonalities of these three waves of protests are reviewed below.

Presidential vs. Parliamentary Conflict and the 2017–2018 Protests

It was clear from the outset of the 2017 anticorruption protests that they were enveloped in a rigid and fraught conflict between President Klaus Iohannis and the PSD government. It can be argued that this stand-off made explicit and urgent the benefits of participating in the protests. Neither side had clear dominance and, consequently, each show of public support could be used to claim that one side was more popular than the other. The president clearly opposed the government's draft law to decriminalize some corruption-related

offenses. The announcement about the law possibly was strategically timed for late on Tuesday, January 17, 2017. It appears that the protests were an instant and impulsive reaction to the draft law because just an hour or two later, more than 12,000 protesters gathered in Bucharest and about 10,000 protesters poured into the streets in other cities.

The president embedded the dispute over the draft law within a fractious institutional setting, thus raising the stakes for protesting and increasing the benefits for potential protesters. Presidential opposition may not have triggered the protests, but it certainly encouraged and facilitated them. Iohannis's strong position was clearly articulated in a televised announcement on Facebook: "Will we have a majority [in parliament] which wants to prove that it is playing the games in Parliament... ? Or will we have a mature majority... so that together, we guarantee national security and the rule of law?"⁴⁰ Abstracting from conjectures that Iohannis himself depended on an unreformed Securitate and the use of "compromats," his intense media presence ensured that, when the law was issued, the public already was predisposed by the president's messaging in favor of interpreting the decree as an infringement on the rule of law.

The president's position vis-à-vis parliament was further reinforced by his subsequent messaging. On the next day, Wednesday, January 18, 2017, his Facebook post announced that he had chaired an executive meeting, which had concluded that the ordinance "should not be adopted by the executive overnight" and that this legislative act should be subject to "public opinion."⁴¹ This act of explicitly calling for public opinion again could have raised the benefits of protesting, as it showed that there was a general disagreement and it was the public that should judge the dispute. Two days later, the president's position was even more extreme. He stated that "emergency orders on pardon and amendment of criminal codes are unacceptable" because various organs along with civil society have "firmly ruled against the amendment of the legislative framework on corruption, abuse of service and integrity, in emergency." In the meantime, the president complemented his highly critical stance against the pardoning draft law by joining the protesters, shaking hands with them, and appearing generally jovial as well as in agreement with their demands.⁴²

The dual-executive conflict that enshrined the corruption draft law was not fueled one-sidedly by President Iohannis. The government's counter-side was defended most vigorously by Liviu Dragnea, chairman of the Social

⁴⁰ Iohannis Klaus, official Facebook Page.

⁴¹ Ibid.

⁴² "Romania's President Joins 20,000 People Who Protest in Bucharest against Govt.'s Changes to Criminal Law," *Romania Insider* (January 23, 2017), <https://www.romania-insider.com/romanians-president-joins-protest-bucharest-against-changes-to-criminal-law> (accessed June 13, 2019).

Democratic Party. The conflict was real, both sides were vocal, and the balance of power was precarious. This situation highlighted the critical importance of protests on both sides. Dragnea's position was that it was not the government that was violating the rule of law by amnestying convicted former officials; it was the president who was staging a *coup d'état* by rallying the protesters against the government. According to Dragnea, the president's position and the protesters' claims amounted to a *coup d'état* because they sought to violate the voice of the parliamentary majority elected on December 11, 2016. On Sunday, January 22, 2017, Dragnea wrote on his Facebook page, "President Iohannis wants, just like former President Basescu wanted, to put in cuffs the power legitimated through the democratic vote. He wants Romania to still be led by institutions without democratic legitimacy, through terror so that Romanians can be prisoners of some unelected powers... . I support the actions against corruption, but actions against the true corruption."⁴³

Making the dual-executive conflict even more explicit, the president turned the allegations of a *coup d'état* around and stated that it was the government that was staging one: "The citizens to stage a coup? No, it's the politicians who are attempting a coup, not a coup d'état, but a coup de grace to the rule of law."⁴⁴ Shortly after the mass demonstrations on Sunday, President Iohannis declared that he would call for a referendum so that public opinion could have a say. In a way, the president's call for a referendum was a mechanism to permit the protests to have a formal effect on the executive—executive impasse. In issuing the call, he once again raised the stakes for expressing one's opinion. Because the protests were so massive, the government scrapped the proposed bill before the referendum could be implemented.⁴⁵ It was evident from the sequence of events, however, that the dual-executive conflict was actively fought. The balance of power raised the benefits of participating in the protests, and public opinion—whether in the form of a referendum or protests—was significant in breaking the deadlock.

Presidential vs. Prime-Ministerial Conflict and the 2007 and 2012 Referenda

The stand-off between the president and the government in 2017 was not without precedent. To underscore the explosive and systematic nature of the dual executive arrangement in Romania, it is important to draw parallels to similar stand-offs in 2007 and 2012, both of which resulted in referenda to

⁴³ "PSD's Dragnea: I Find Romania's President Ahead of a New Mineriad," *Nine O'Clock* (January 23, 2017), <https://www.nineoclock.ro/tag/psds-dragnea-i-find-romanias-president-ahead-of-a-new-mineriad-its-a-beginning-of-a-coup-detat/> (accessed June 13, 2019).

⁴⁴ "Romanian President Iohannis Announces Referendum on Justice Laws on May 26," *Romania Insider* (March 29, 2019), <https://www.romania-insider.com/romanias-president-calls-referendum-justice-laws/> (accessed June 13, 2019).

⁴⁵ "Amid Protests, Romania Scraps Proposed Corruption Bill," *CNN* (February 5, 2017), <https://edition.cnn.com/2017/02/05/europe/romania-protests-corruption/> (accessed June 13, 2019).

impeach the president. The friction in 2007 between President Basescu and Prime Minister Tariceanu stemmed from a number of disagreements. Perhaps most importantly, Basescu and Tariceanu represented two different parties which formed a coalitional government. Basescu insisted that Tariceanu should resign and call for early elections, in the hope that Basescu's party would gain a majority. The prime minister refused to resign. Second, the tension was fueled by their duelling claims to represent Romania at the European Council meeting; indeed, the relationship was so acrimonious that Basescu and Tariceanu traveled by separate planes to Brussels.⁴⁶ Third, the dual-executive conflict channeled their different positions vis-à-vis the corruption fight. The conflict boiled over when the prime minister dismissed all ministers who belonged to the president's party from his cabinet. His prime target was removing the justice minister, Monica Macovei, who was at the helm of the anticorruption fight. This dual-executive conflict culminated in a parliamentary call to hold a referendum for the impeachment of the president. The referendum failed to impeach the president, as only 25 percent of the members voted in favor. On May 24, 2007, Basescu was reinstated to the presidential position.

A similarly "thermonuclear"⁴⁷ stand-off ensued in 2012, when President Basescu (again) faced off against Prime Minister Victor Ponta. The personal animosity between the two exploded in the context of allegations that Ponta had plagiarized his Ph.D. dissertation.⁴⁸ These charges, however, masked a conflict over severe austerity measures and a fight over the powers of the Constitutional Court.⁴⁹ At the foundation of the conflict were competing claims to represent Romania at a meeting of the European Council (again!). Uncannily, this was one of the cruxes of contention animating the 2012 dual-executive conflict as well. Once again, Basescu survived the referendum because the turnout was lower than the expected 50 percent.⁵⁰ It is evident that in 2007, 2012, and 2017, the dual-executive conflict was acute and could have been resolved only by public opinion.

⁴⁶ Gherghina and Miscoiu, "The Failure of Cohabitation." Upon Romania's joining the EU in 2007, the European Commission established a Cooperation and Verification Mechanism, which allowed the commission to monitor Romania's progress in judicial and anticorruption reforms.

⁴⁷ Vlad Perju, "The Romanian Double Executive and the 2012 Constitutional Crisis," *International Journal of Constitutional Law* 13, no. 1 (2015): 246-278.

⁴⁸ Quirin Schiermeier, "Romanian Prime Minister Accused of Plagiarism," *Nature News* 486, no. 7403 (2012): 305.

⁴⁹ Corinne Deloy, "The Future of Romania: The Focus of the Referendum on the Impeachment of the President of the Republic Traian Basescu," Robert Schuman Foundation (2012), <https://www.robert-schuman.eu/en/eem/1380-the-future-of-romania-the-focus-of-the-referendum-on-the-impeachment-of-the-president-of-the-republic-traian-basescu> (accessed March 19, 2019).

⁵⁰ "EU and Romania Impeachment Referendum," *Euronews* (July 30, 2012), <https://www.euronews.com/2012/07/30/eu-and-romania-impeachment-referendum> (accessed March 25, 2019).

Cleavage Structures: The Virtual Marker of the Communist Legacy and the Anticorruption Protests

This essay advances the proposition that the communist vs. anticommunist cleavage was one of the most important constituents of the political opportunity structure that led to the 2017 protests. It functioned as a virtual marker, which positioned politicians in the corruption fight, and thus greatly reduced the cost of understanding the politicians' motivations. By serving as a virtual marker, the communist legacy decreased the uncertainty enshrining corruption allegations and counter-allegations. It was a short-cut that allowed people the possibility to form their opinions more easily in a complex environment. The primary mechanism that makes the communist cleavage a virtual marker of certainty is this: having a communist past or taking a particular stand toward one's communist past indicates to the public where an individual stands vis-à-vis the corruption fight. The closer one is identified with the communist legacy, the more likely this person will oppose anticorruption. Thus, the communist cleavage reduces the uncertainty inherent in corruption allegations. In doing so, it decreases the cost of determining who is corrupt, who takes what stand toward certain corruption allegations, and why. Consequently, protests are less costly.

There are plenty of anecdotal, symbolic, aggregate, and historical data that highlight an implicit equivalency between the fight against corruption and the fight against communism. Some studies explain the 2017–2018 protests as a sign of the “emergence of a new generation of post-communist citizens, inhabiting a new social sphere, consuming both culture and politics.”⁵¹ Others argue that the 2017 protests were fueled by charges of neocommunism because anticommunism “remains the most emotive issue in Romanian politics.”⁵² In addition, some anecdotal evidence suggests that the 2017 protesters viewed the decriminalization law as a return to communism. For example, the *Guardian* reported that Alexandra Boeriu, a thirty-five-year-old protester, said on the eve of the 2017 protests: “I don't normally protest but I just felt such a sense of rage. I was young, but I did live through communism and I know what this is. I don't want this for my kids. There are a lot of people protesting who want to have a future in this country. It feels like someone has died.”⁵³

⁵¹ Ruxandra Gubernat and Henry Rammelt, “Recreative Activism in Romania: How Cultural Affiliation and Lifestyle Yield Political Engagement,” *Hal Archives Ouvertes*, <https://halshs.archives-ouvertes.fr/halshs-01689629/document> (accessed June 10, 2019).

⁵² Mark Almond, “Romania since the Revolution,” *Government and Opposition* 25, no. 4 (1990): 484–496.

⁵³ Kit Gillet, “Protesters in Romania Denounce Plan to Decriminalise Misconduct Offences,” *Guardian* (February 1, 2017), <https://www.theguardian.com/world/2017/feb/01/romanians-protests-emergency-law-prisoner-pardons-corruption> (accessed June 10, 2019).

It was not only the protesters who equated the decriminalization law with a return to communism. The media often have compared the 2017 demonstrations with the 1989 revolution against the communist regime.⁵⁴ For example, Christian Popescu finds an equivalency between corruption and communism because they both benefit the establishment monetarily to the detriment of society.⁵⁵ Furthermore, the slogans of the 2017–2018 protests replaced the more generic 2012 and 2013 slogans, such as “different parties, same misery” or “all parties steal in rotation,” with a slogan that was specifically targeted at the PSD. The 2017 slogan read: “PSD, the red plague.”⁵⁶ It should be noted that the PSD “has its roots in the Soviet-era Communist Party” and that some newspapers published transcripts of party meetings in 2004 that proved “without any ambiguity that Romania’s post-communists did not free themselves from authoritarian reflexes when they became ‘pro-European.’”⁵⁷ While voters felt a sense of disillusion with all parties, including with President Iohannis, who failed to create a new political class to fight corruption, these specific instances indicate that the disillusion with the PSD was more pronounced.⁵⁸

The former communist party, PSD, which promoted the decriminalization decree, equated the protesters with the violent miners’ strike against anticommunists in 1990, known also as the *Mineriada*. On the eve of the 2017 protests, Dragnea made the link between the anticommunist protests of 1990 and the 2017 anticorruption protests: “I have found Romania’s President heading a new *Mineriada*, an unauthorized protest, against the Government of Romania, against the constitutional order and against the popular vote on 11 December.”⁵⁹ Although the situational equivalency is not like-for-like, it still establishes a link between corruption and communism.

On a pragmatic level, the nexus between corruption and communism is evidenced by the fate of Liviu Dragnea, the chairman of PSD. In April 2016, Dragnea received a two-year suspended sentence for trying to rig the 2012 referendum for the impeachment of President Basescu. The prosecution said that Dragnea recruited at least seventy people from his party to organize a

⁵⁴ Raluca Abăseacă and Geoffrey Pleyers, “The Reconfiguration of Social Movements in Post-2011 Romania,” *Social Movement Studies* 18, no. 2 (2019): 154–170.

⁵⁵ Cristian Popescu, “Romania: The Second Fall of Ceausescu,” *Aljazeera* (February 17, 2017), <https://www.aljazeera.com/indepth/opinion/2017/02/romania-2017-protests-1989-ceausescu-170216114655475.html> (accessed June 10, 2019).

⁵⁶ Abăseacă and Pleyers, “The Reconfiguration of Social Movements in Post-2011 Romania,” 160.

⁵⁷ Peter Gross and Vladimir Tismaneanu, “The End of Postcommunism in Romania,” *Journal of Democracy* 16, no. 2 (2005): 147.

⁵⁸ Alina Mungiu-Pippidi, “Romania’s Italian-Style Anticorruption Populism,” *Journal of Democracy* 29, no. 3 (2018): 114.

⁵⁹ “PSD’s Dragnea: I Find Romania’s President Ahead of a New *Mineriada*,” *Nine O’Clock* (January 23, 2017), <https://www.nineoclock.ro/2017/01/23/psds-dragnea-i-find-romania-president-ahead-of-a-new-mineriada-its-a-beginning-of-a-coup-detat-i-wont-allow-president-iohannis-to-overthrow-the-constitutional-order/> (accessed June 10, 2019).

high enough turnout for the referendum vote, which in turn could ensure that the referendum was valid.⁶⁰ It was this sentence that kept Dragnea from becoming prime minister, despite the fact that his party won a majority in the 2017 elections and that he was the party's chairman. Yet, it would be hardly a coincidence that, as soon as the party came to power with a 45 percent majority, it decided to issue the pardoning decree. This temporal sequence clearly demonstrated that PSD and the anticorruption law merged to protect Liviu Dragnea. As Deletant wrote, "the PSD is likely to use parliament to manipulate the law in an effort to keep Dragnea out of jail."⁶¹

Even abstracting from the symbolic, anecdotal, media, or pragmatic connections between communism and corruption, there are some aggregate-level data to support such a link and to make anticommunism a virtual marker of anticorruption. The evidence shows that the opposition party, PSD, was the main target of the corruption probes. According to Ionescu, the data on high-level cases brought to justice by NAPO "[display] the bias against the opposition" because "between 2005 and 2008, not even one case of a high-level politician brought to justice belonged to the Liberal Democrat Party, which was President Basescu's main supporter and, also, supporter of the new anti-corruption wing of the judiciary, represented by Monica Macovei and the General Prosecutor of NAPO."⁶²

The communist cleavage is a strong virtual marker of certainty, yet it is not a completely unambiguous marker of uncertainty. Despite all the media, anecdotal, symbolic, and other parallels between the fight against communism and the fight against corruption reviewed above, the connection is not as straightforward as it seems for one simple reason: it is hard to square the fact that former communist party members were convicted during the time that the former communist party was in power. This inquiry is even more puzzling considering that Romania's communist party is the only one in the post-communist region that has been in power "in virtually every government since the fall of Communism."⁶³ The persistent returns of the communist party can be explained by the solid peasant support, which constitutes roughly 35 percent of the electorate.⁶⁴

⁶⁰ Liviu Dragnea, the leader of Romania's Social Democratic Party (PSD), received a two-year suspended sentence for attempting to rig a 2012 national referendum calling for impeachment of the country's president.

⁶¹ Denis Deletant, "Romania's Protests and the PSD: Understanding the Deep Malaise That Now Exists in Romanian Society," *LSE Blog* (August 31, 2017), <https://blogs.lse.ac.uk/europpblog/2018/08/31/romania-protests-and-the-psd-understanding-the-deep-malaise-that-now-exists-in-romanian-society/> (accessed June 10, 2019).

⁶² Ionescu, "Controlling Corruption or Controlling States? EU and Anti-Corruption Policies," 174, 176.

⁶³ Gross and Tismaneanu, "The End of Postcommunism in Romania," 147.

⁶⁴ Alina Mungiu-Pippidi, *A Tale of Two Villages: Coerced Modernization in the East European Countryside* (Budapest: Central European University Press, 2013).

Thus, the inquiry that should be put forward is to what extent the fight against corruption could stand as a virtual marker of the fight against communism. If the fight against communism was a fight against corruption, how can one explain the fact that Liviu Dragnea, despite heading the Chamber of Deputies, the lower house of parliament, and the former communist party, PSD, was sentenced to three and a half years in jail in June 2018,⁶⁵ after the 2017 protests and after PSD took 46 percent of the vote? To advance this inquiry even further, it should be noted that the National Anticorruption Directorate opened separate corruption investigations against key PSD figures: Dragnea, and Deputy Prime Minister Sevil Shhaideh.⁶⁶

One possible answer to the line of questioning is that there was much confusion as to what counted as a communist party successor. These parties include the Social Democratic Party (PSD), the Democratic Party (PD), the Greater Romania Party (PRM), and the Socialist Work Party (PSM).⁶⁷ Confusion about the communist credentials of politicians can be traced back to the peculiarities of Ceausescu's regime. Many communist parties sprung up, as Ceausescu's regime was a personal dictatorship that did not have a solid institutional framework. Furthermore, Ceausescu's regime marginalized Gorbachev-style communist reformers, who used this marginalization to claim democratic credentials post-1989.⁶⁸ As a result of these peculiarities, communist parties splintered, adopted "ideological flexibility and opportunism," and, most importantly, starting forging their own brand of communism, sometimes taking advantage of personal rivalries.

Strategies of Authorities: The Role of Personalities and the Anticorruption Protests

Personalities serve as a marker of certainty in the uncertain context of the anticorruption struggle. This marker of certainty decreases the cost to potential protesters in orienting themselves in a highly confusing anticorruption environment. The role played by President Klaus Iohannis is evidenced by

⁶⁵ The charges date back to 2012, when Dragnea was a local council leader in Southern Romania and put two of his party officials on the local council's payroll, despite their not working for him. See "Liviu Dragnea a fost condamnat la 3 ani și 6 luni de închisoare cu executare în dosarul angajărilor fictive" [Liviu Dragnea was sentenced to 3 years and 6 months in prison for ordering a fictitious employment dossier], *G4Media.ro* (June 21, 2018), <https://www.g4media.ro/alerta-liviu-dragnea-a-fost-condamnat-la-3-ani-si-6-luni-de-inchisoare-cu-executare-in-dosarul-angajarilor-fictive.html> (accessed March 23, 2019).

⁶⁶ "Freedom in the World 2018: Romania Profile," Freedom House, <https://freedomhouse.org/report/freedom-world/2018/romania> (March 23, 2019).

⁶⁷ Grigore Pop-Eleches, "A Party for All Seasons: Electoral Adaptation of Romanian Communist Successor Parties," *Communist and Post-Communist Studies* 41, no. 4 (2008): 472.

⁶⁸ Anna M. Grzymala-Busse, *Redeeming the Communist Past: The Regeneration of Communist Parties in East Central Europe* (Cambridge, UK: Cambridge University Press, 2002).

his active and unambiguous positions against the decriminalization draft law and in support of the protesters. As documented above, he expressed these positions on Facebook, where he was the first European politician to reach one million likes.⁶⁹ Beyond his public pronouncements on the anticorruption protests, Iohannis's personal brand includes values that are openly and directly opposed to corruption, such as an "incorruptible personality," "integrity, equidistance," and "decency."⁷⁰ According to Irina Ana Lechintan, publication of the autobiography *Step by Step* (Pas cu pas) was a means to eradicate the negative characteristics of Iohannis's political brand, such as a lack of emotional connection with the electorate.⁷¹ Due to the careful construction of his personal brand, Iohannis's position vis-à-vis the corruption protests was seen as that of a relatively unbiased outsider. Iohannis was markedly disconnected from communist-era crimes, as he was a representative of Romania's ethnic German minority and expected to embody the Western-style interpretation of integrity.⁷² Although not everybody perceived Iohannis positively, some part of the population associated his background with a "moral revolt" against injustice and corruption.⁷³ His electoral win is attributed to the inability of Victor Ponta, his opponent, to "associate him with a political party or a politician who represented the 'old style' of Romanian politics" and "his image as an outsider."⁷⁴

Personalities played an important role in shaping political opportunity structures, reducing uncertainty, and decreasing the costs of entering the protests, even when the candidates came from communist parties. In both the 2004 and 2009 presidential elections, the only viable candidates represented the two largest communist party successors, PSD and PD, which represented two former factions of the National Salvation Front, widely perceived as

⁶⁹ A. Drifter, "Klaus Iohannis Breaks Facebook Record Becoming First European Politician to Reach 1 Million Likes Milestone!" (2014), cited in Monica Pătruț, "The 2014 Presidential Elections Campaign in Romania: Connecting with Civic-ness on Facebook," in *Social Media and Politics in Central and Eastern Europe*, ed. Pawel Surowiec and Václav Štětka (London: Routledge, 2017), 45-63.

⁷⁰ Irina Ana Lechintan, "The Personal Brand Klaus Iohannis," *Sibiu* (2015), <http://economie.ulbsibiu.ro/revista.studentilor/archive/RevStudEcoSib12015.pdf#page=27> (accessed June 10, 2019).

⁷¹ Ibid.

⁷² Ovidiu Oltean, "Klaus Iohannis' Presidential Term: Between High Hopes and Disillusionment," *European Yearbook of Minority Issues Online* 14, no. 1 (2017): 199-215, https://brill.com/view/journals/ymio/14/1/article-p199_199.xml (accessed June 10, 2019).

⁷³ Vintilă Mihăilescu, "Santa Klaus: Romanian Presidential Elections, Moral Revolt, and the Anthropological Discourse," *Perspectives in Politics/Perspective Politice* 7, no. 2 (2014): 13-21.

⁷⁴ Mihnea Stoica, "Romania's Party System Remains in Flux Ahead of Next Year's Local and Parliamentary Elections," *LSE European Politics and Policy (EUROPP) Blog* (August 6, 2015), <https://blogs.lse.ac.uk/europpblog/2015/08/06/romaniyas-party-system-remains-in-flux-ahead-of-next-years-local-and-parliamentary-elections/> (accessed June 5, 2019).

the unofficial successor to the Romanian Communist Party.⁷⁵ The stand-off between the two former communist officials in the 2004 Romanian presidential election is particularly instructive. Traian Basescu represented the center-right Democratic Party (*Partidul Democrat*, PD), which was part of the Justice and Truth Alliance (DA), and outgoing Prime Minister Adrian Nastase represented the center-left Social Democratic Party (*Partidul Social Democrat*, PSD).⁷⁶ During the final presidential debate, Basescu is said to have maneuvered strategically in both highlighting the common communist legacy he shared with his opponent, Nastase, and at the same time distancing himself from it. In other words, Basescu portrayed himself as a “communist with a difference.”⁷⁷

A linguistic analysis of Basescu’s statement shows that he managed to prefigure his communist legacy by reshaping the boundary of what counted as a communist legacy: he

cleverly and explicitly opts out of a fundamentalist, Manichean opposition between “us” and “them” as “anti-communists” vs. “ex-communists” and draws the dividing line elsewhere, i.e., between the majority of the population (in which he includes himself) and the ex-communist oligarchy (i.e., those communists who did live off political work and who had communist mentalities).⁷⁸

Apart from astute rhetorical maneuvers, Basescu managed to serve as a virtual marker of certainty by launching a vigorous anticorruption campaign. To make his position as unambiguous as possible, he distanced himself from the corruption scandal in which his brother was embroiled. A few months before the 2004 elections, Basescu said in tears: “Between the need to ensure an independent justice system and the natural reflex of protecting your brother, I choose justice.” To understand why Basescu served as a virtual marker of certainty, it is important to note that he was considered to have an “incandescent personality and combative attitude,”⁷⁹ and to be a “player-president”⁸⁰ who was outspoken on issues, even when he could have served as a mere mediator. Basescu and Iohannis were the two outspoken and prominent office holders who played a central role in diminishing uncertainty and decreasing the cost

⁷⁵ Pop-Eleches, “A Party for All Seasons,” 465-479.

⁷⁶ Ibid.

⁷⁷ Isabela Iețcu-Fairclough, “Populism and the Romanian ‘Orange Revolution’: A Discourse-Analytical Perspective on the Presidential Election of December,” *Studies in Language & Capitalism* 2 (2007): 31-74.

⁷⁸ Ibid.

⁷⁹ Gherghina and Miscoiu, “The Failure of Cohabitation,” 681.

⁸⁰ Ryo Fujishima, “Traian Basescu, ‘Player-President’: Romanian Semi-Presidentialism in a Comparative Perspective,” *Russian and East European Studies* 41 (2012): 3-18.

of understanding on which side of the protest people should find themselves. In this capacity, their public images served to “organize” issues of national identity and national pride, which would have been too hard to pinpoint without prominent figures.

Romania’s 2017 Anticorruption Protests: Genesis and Success

Romania’s 2017 anticorruption protests emerged against a background of uncertainty. The uncertainty stemmed from several sources. It was not clear whether the corruption allegations, which were the reason why officials were indicted, were truthful. Establishing the veracity of a corruption allegation is by default very hard because it requires privileged access and insider knowledge. The air of uncertainty was fueled by the lack of knowledge whether the prosecutors, Kovesi and Macovei, were independent or politically biased. This doubt was premised on a more fundamental and omnipresent lack of clarity as to what rules guaranteed prosecutorial independence. There was additional uncertainty as to who should be authorized to lift the immunity of the officials facing the corruption allegations. Finally, it was unclear who should manage the secret service, which had access to information that could serve as the basis of corruption accusations. All in all, uncertainty was rife.

Given the high level of uncertainty, the essay suggests that there are some elements of the political opportunity structure in Romania that made the protests possible. The decisions of the protesters were explained through a cost–benefit analysis. In principle, uncertainty raised the cost of participating in the protests because it was unclear who was corrupt and who was meant to investigate corruption. The present analysis suggests that there are three “virtual markers of certainty” which decreased the cost of protesting and increased the benefits. The presence of strong presidential personalities served as short-cuts to potential protesters who wanted to orient themselves in the confusing corruption landscape. Furthermore, the communism–anticommunism cleavage reduced uncertainty as to who was more likely to be corrupt. The general narrative posited that the members of the successor communist parties were more likely to have committed corrupt acts. Arguably, the communist–corruption equivalence reduced the relative cost of identifying the corrupt types. Finally, the executive stand-off between the president and the government, which is elected by parliament, made it more beneficial to participate in the protests, because the powers were very close and each protester could tip the balance.

The 2017 anticorruption protests were successful in the sense that they managed to make the governing PSD party drop the emergency draft law decriminalizing certain corruption-related crimes. There are other positive developments that are harder to quantify but may play a major role in gauging the success of the Romanian anticorruption fight. Prosecutor Kovesi and

Justice Minister Macovei came to serve as the heroes and “superstars.”⁸¹ Kovesi is now the EU Chief Prosecutor. Macovei is a member of the European Parliament. The two women embodied the belief that the defeat of high-level corruption is possible and that “the most important thing is that Romanians feel that nobody is above the law.”⁸² Every nation needs an anticorruption hero, and Romania certainly has its own.

Table 1. Measures of Corruption in Romania

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Freedom House*	4.00	4.00	4.00	4.00	4.00	4.00	4.00	3.75	3.75	3.75	3.75
Corruption Perception Index**	NA	NA	NA	NA	44	43	43	46	48	48	47

Sources: * Freedom House, <https://freedomhouse.org/report/freedom-world/2018/romania> (accessed March 23, 2019).

** “Corruption Perception Index 2018,” *Transparency International*, <https://www.transparency.org/cpi2018> (accessed May 23, 2019).

Yet, the achievements of the protests are considered by some to “have been modest and short-lived, with the country’s ruling Social Democratic Party still maintaining power.”⁸³ The protests did not substantially improve Romania’s standing in the Freedom House and Transparency International corruption indices (table 1). In general, the level of corruption in the country still is considered to be high.⁸⁴ Furthermore, there are concerns that Romanians may have become desensitized to allegations of corruption, and that because of the high frequency of investigations, the moralizing effect of allegations has diminished. Instead of being perceived as potentially corrupt officials, those under investigation portray themselves as victims of witch hunts. Overall, the political system may have suffered because the damaged reputation of the convicted incumbents may have diminished the public’s trust in the system as a whole.⁸⁵

⁸¹ Martin Banks, “Romania’s Former Anti-Corruption ‘Superstar’ Now Being Targeted,” *International Policy Digest* (February 19, 2019), <https://intpolicydigest.org/2019/02/19/romania-s-former-anti-corruption-superstar-now-being-targeted/> (accessed May 10, 2019).

⁸² Kit Gillet, “‘We Must Fight On’—Romania’s Crusader against Corruption Will Not Back Down,” *Guardian* (February 12, 2017), <https://www.theguardian.com/world/2017/feb/12/romania-corruption-chief-prosecutor-laura-codruta-kovesi--steely-vigilance> (accessed May 19, 2019).

⁸³ Daniel Brett, “Why Romania’s Protests Have Failed to Bring About Real Change,” *LSE Blog* (September 18, 2019), <https://blogs.lse.ac.uk/europpblog/2018/09/19/why-romanians-protests-have-failed-to-bring-about-real-change/> (accessed May 23, 2019).

⁸⁴ Michael Hein, “The Fight against Government Corruption in Romania: Irreversible Results or Sisyphean Challenge?” *Europe-Asia Studies* 67, no. 5 (2015): 747-776.

⁸⁵ Donatella Della Porta and Alberto Vannucci, “Corruption and Anti-Corruption: The Political Defeat of ‘Clean Hands’ in Italy,” *West European Politics* 30, no. 4 (2007): 835.

Some of the most damning effects of the anticorruption efforts were to convey the sense that the anticorruption fight is inconsequential because convicted officials are not dismissed or are dismissed but reelected to office. For example, Prime Minister Victor Ponta resigned in November 2015 on corruption allegations as well as charges of plagiarism, only to return to power in January 2017. In another prominent example, Liviu Dragnea, one of the country's most powerful politicians, has been dogged by corruption charges for years, while heading the PSD. Thus, one hazard epiphenomenal to the anticorruption fight is to have normalized governance by convicted felons. Equally alarmingly, the recent acquittals of high-ranking officials have further bolstered the impression that convictions are inconsequential. In May 2018, the Romanian Supreme Court acquitted the Senate Speaker and former Prime Minister Calin Popescu Tariceanu for lying under oath in a real-estate graft trial; it acquitted former Prime Minister Victor Ponta, who was charged with forgery, money laundering, and being an accessory to tax evasion; and it acquitted the opposition National Liberal Party leader, Ludovic Orban, for requesting a bribe of 50,000 Euros. Other high-profile acquittals followed.⁸⁶

Another vulnerability of the corruption fight is creating the impression that small victories are always reversible. One example of the reversibility of anticorruption victories is the case of the governing PSD, which dropped the decriminalization law in January 2017, only to up the ante and submit a bolder proposal to decriminalize abuse of office in cases involving even bigger thefts in December 2017. In another example, during the summer of 2017, the parliament passed legislation that generally will make it much more difficult to prosecute cases of corruption and abuse of office.⁸⁷ Furthermore, and equally important, in February 2019, a decree put forward by Justice Minister Tudorel Toader changed the appointment process of chief prosecutors and weakened the prosecutorial oversight over the investigations of magistrates.⁸⁸ The anticorruption fight also is unsuccessful to the extent that it has indicated that only those who cannot pay their way out of jail will face accountability.

On another level, the anticorruption fight may be ineffective, as corruption charges have come to be perceived as weapons to blackmail political opponents. It seems that the political process is a series of allegations and counter-

⁸⁶ Anna Maria Luca, "Graft Acquittals Threaten Romanian Prosecutors' Image," *Balkan Insight* (May 24, 2018), <https://balkaninsight.com/2018/05/24/romanian-prosecutors-face-scrutiny-for-graft-acquittals-05-23-2018/>, Freedom House, <https://freedomhouse.org/report/freedom-world/2018/romania> (accessed March 23, 2019).

⁸⁷ Zselyke Csaky, "Romania's Attack on the Rule of Law Is Personal, Not Ideological," *Freedom House* (blog) (September 5, 2018), <https://freedomhouse.org/blog/romania-s-attack-rule-law-personal-not-ideological> (accessed June 24, 2019).

⁸⁸ "Romanian Magistrates Stage Unprecedented Protest against Judicial Changes," *Reuters* (February 22, 2019), <https://www.reuters.com/article/us-romania-judiciary-protests/romanian-magistrates-stage-unprecedented-protest-against-judicial-changes-idUSKCN1QB1UG> (accessed May 23, 2019).

allegations, punctuated by pushing secret notes with allegedly incriminating information at crucial and public moments. It proves the point that corruption allegations can be instrumentalized to shame opponents.

