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# Judicial corruption in Eastern Europe: An examination of causal mechanisms in Albania and Romania

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Judicial Corruption in Eastern Europe: An Examination of Causal Mechanisms in Albania and  
Romania

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An Honors Program Project Presented to  
the Faculty of the Undergraduate  
College of Arts and Letters  
James Madison University

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by Claire Swinko

May 2017

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Accepted by the faculty of the Department of Political Science, James Madison University, in partial fulfillment of the requirements for the Honors Program.

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## **Dedication**

*For my dad, who supports and inspires me everyday. You taught me to shoot for the stars, and I would not be half the person I am today with out you.*

## Table of Contents

List of Figures.....	4
Acknowledgements.....	5
Introduction.....	6
Chapter 1: Literature Review and Hypotheses.....	11
Chapter 2: Methodology.....	33
Chapter 3: Judicial Corruption in Albania.....	47
Chapter 4: Judicial Corruption in Romania.....	93
Chapter 5: Findings and Comparisons.....	135
Conclusion.....	155
Appendix.....	163
References by Chapter.....	170

## List of Figures

1	Global perceived levels of judicial corruption .....	39
2	Comparative values for the CEE region.....	40
3	Average of comparative values for CEE EU and non-EU member countries....	40
4	Average comparative scores for CEE region.....	41
5	Overview of Albanian judiciary.....	49
6	Final results.....	155
7	Effect of EU membership and candidate status.....	157

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## **Introduction**

After the fall of communism in 1989, the countries of Central and Eastern Europe (CEE) began their transitions from communist strongholds to pillars of democracy. Each CEE country has undergone (or is in the process of undergoing) its own unique democratization process, but most have encountered a similar problem: eradicating the high levels of corruption that have become endemic within their institutions. Corruption can come in many forms. Transparency International, the leading global organization focused on combating corruption, identifies at least eighteen different forms of corruption on its website. Once corruption takes hold in an institution, it quickly spreads to another, and this pattern continues until it becomes widespread within a society. Literature on corruption is robust, and scholars have identified an extensive list of causes to explain how corruption can take root in a country's institutions.

While corruption is a global phenomenon and certainly is not unique to Central and Eastern Europe, it has become systemic in many CEE countries, causing the gradual weakening of the judiciary and rule of law. Transparency International ranks CEE countries among the most corrupt countries in the world. Many studies on corruption focus solely on countries that are developing or newer democracies. While it is true there are countries in the CEE region that can be classified as developing democracies, I chose this particular region because I am interested in examining corruption in post-communist societies. The beauty of the CEE region is found in its political and economic diversity. The countries of CEE have dramatically transformed since 1989, and though no two countries are alike, the homogeneity across numerous variables commonly associated with high levels of judicial corruption makes this region particularly interesting to research.

This study seeks to evaluate causes of judicial corruption in two CEE countries, Albania and Romania, in an effort to better understand why and how judicial corruption can become rampant in certain political and economic climates. This study also attempts to extrapolate causes of judicial corruption at the regional level to account for the region's high judicial corruption values on Transparency International's Global Corruption Barometer.

My project is qualitative in nature and uses case studies to examine causal mechanisms of judicial corruption in Albania and Romania. I use the method of process tracing to track three independent variables over the following time periods: 2000-2004; 2004-2008; 2008-2012; and 2012- present. The three independent variables in this study are judicial independence, EU membership and candidacy status, and levels of media freedom. The two case studies featured in this project have roughly similar judicial corruption levels. Both can be classified as moderately to highly corrupt using Transparency International's classification system. However, they do differ on certain political and economic variables, suggesting that there are causes that could be country-specific.

Of particular interest in this study is the effect of EU membership and candidacy status on curbing judicial corruption levels. The effect of membership in global institutions on promoting democracy is a hotly debated topic in literature, and is particularly relevant today, as the European Union has come under attack in recent years by those who no longer believe the institution to be effective. A key tenant of democracy is upholding the rule of law and respecting the autonomy of the judiciary. An independent judiciary is vested with the proper authority to carry out its mandate, is free from politicization, and preferences upholding the rule of law over pursuing individual interests. Theoretically speaking, EU member and candidate countries should have lower levels of judicial corruption because they have underwent, or are in the process of



undergoing, the EU's strict accession process. As a result, they have adopted numerous laws that are meant to promote a healthy democracy, a key component of which is an independent judiciary.

Conditionality is the EU's most powerful weapon, and over the years it has appeared to be losing its effect. Many CEE EU member countries have been accused of “democratic backsliding”—or the reversion to authoritarian tendencies and a disrespect for the rule of law. Romania, one of the case studies featured in this study, has followed this trend. Literature on this relationship will be explored in depth in the next chapter of this study, but the general consensus amongst scholars is that the effect of EU membership and candidacy status on curbing corruption levels is positive, but there are limitations to the extent of its effectiveness in different stages of the accession process (see Vachudova, 2009; Garbbe, 2014; Dimitrova, 2010). My findings support those of other scholars. First, I argue that the European Union is moderately effective in lowering judicial corruption levels in the early stages of accession, but is even more effective in lowering corruption levels once a country obtains candidacy status and gets closer to acceding to the Union. I also find that EU conditionality stagnates once a country accedes to the EU, as in Romania, because the “carrot” of membership status has been achieved and the “stick” is no longer effective in persuading political elites to continue reforms. Second, I make the case that the domestic context of the potential member country is important when discussing the effect of EU membership and candidacy status on lowering corruption levels. This study examines the influence of public opinion, the political will of the government to adopt EU reforms, and the possible influence of EU “enlargement fatigue”.

Second, I examine the relationship between judicial independence and judicial corruption levels. Judicial independence, as previously stated, is a key tenant of a healthy judiciary. If a

judiciary is not autonomous from politicians, businessmen, or organized crime, then it is entirely likely that external actors will place undue pressure on judges and other important members of the judiciary. Due to the overarching nature of judicial independence, I have selected two variables to measure this concept: government system type and political competition. The effect of government system is heavily debated, and there does not seem to be a consensus in the literature about which type of government system (parliamentary, presidential, or semi-presidential) is conducive to promoting low levels of judicial corruption. Literature slightly favors parliamentary systems, but my findings indicate that parliamentary systems are no better off at lowering judicial corruption levels than any other type of government system. In fact, Romania's semi-presidential system posed similar problems to those identified with Albania's parliamentary system. I found that what actually has the greatest effect on corruption levels is the distribution of powers between the president and prime minister. The more ambiguous the distribution of powers is between these two actors, the more likely it is that political elites attempt to consolidate power by using the judiciary as their pawn to further their political agendas. Additionally, I argue that higher levels of destabilizing political competition lead to higher levels of judicial corruption. I found that this was because, particularly in Romania, parties are not founded upon solid ideologies but are rather personality driven. As a result, they often engage in bitter political battles and attempt to undermine reform efforts so as to consolidate their power. Political elites in both countries also place an emphasis on furthering their own political interests over state building, which is consistent with other studies on post-communist CEE states (see O'Dwyer, 2008; Gryzmala-Busse, 2002).

Media freedom is a key tenant of democracy, and if not respected, can hinder the ability of the media to fulfill its role as a watchdog. My findings indicate that if a country has a low

level of media freedom, then it will have higher levels of judicial corruption. This is because journalists are either forced to self-censor, or their media outlets are politicized. A majority of the media outlets in Romania and Albania are owned either by political elites or businessmen with ties to politicians. Politicians also have a tendency to use the courts as their pawn in their fight against journalists.

It is my hope that this study can provide a comprehensive understanding of how judicial corruption has become endemic in Romania and Albania. By using a case study methodology I can delve deep into the histories of these countries so as to produce a detailed narrative of their struggles with judicial corruption since 2000. The next chapter in this study will survey the dense literature available on causes of judicial corruption. First, I will discuss the causes of general corruption, as causes of judicial corruption are often closely tied to those of general corruption. Second, I will delve into causes that are specific to the judiciary. In the literature review chapter I also outline and justify my hypotheses. Chapter 2 will explain my methodology and case study justification. I will also operationalize my variables and define key concepts. Chapter 3 will focus on Albania's judicial corruption woes from 2000 until present, and will include sections on all three independent variables with analyses for each. Chapter 4 focuses on the Romania case study. In Chapter 5, I will compare and contrast my findings and supply the implications of my findings for the broader CEE region. Finally, I conclude with closing remarks about judicial corruption in Central and Eastern Europe in the last chapter of this study.

## **Chapter 1: Literature Review and Hypotheses**

### **I. What is corruption?**

Transparency International, the leading global anti-corruption organization, broadly defines corruption as the “abuse of entrusted power for private gain” (2016). The organization identifies three classifications of corruption: grand corruption, petty corruption, and political corruption. Grand corruption occurs when individuals in high-level government positions abuse their power to “distort policies or the central functioning of the state, allowing leaders to benefit at the expense of the public good” (Transparency International, 2016). Rose-Ackerman and Palifka emphasize that grand corruption primarily involves small groups of high-level “players” and trading of large sums of money (2016, 11). Petty corruption occurs at the low to mid-level ranks of public officials during their daily exchanges with citizens and involves abuses of power for personal gain (Transparency International, 2016). Political corruption, similar to grand corruption, involves high-level players in government. The key distinction between grand and political corruption, though, is that in addition to altering government policies, political corruption also alters a country’s institutions and its functionality for the personal gain of politicians or decision makers (Transparency International, 2016).

Rose-Ackerman and Palifka state that at the core of corruption is the inability to forgo pursuing self interests for “legitimate and productive purposes” (2016, 7). In order to secure these self interests many government officials and politicians engage in different types of corrupt acts. Rose-Ackerman and Palifka identify the following as some of the most wide-spread forms of corruption: bribery, extortion, exchanging of favors, nepotism, cronyism, judicial fraud, accounting fraud, electoral fraud, public service fraud, embezzlement, kleptocracy, influence peddling, and conflicts of interests (2016, 8-9). For the purposes of this paper, the most relevant

corrupt acts pertaining to judicial corruption are bribery, extortion, exchanging of favors, judicial fraud, influence peddling, and conflicts of interest. Below are the definitions of the types of corruption, as defined by Rose-Ackerman and Palifka (2016, 8-9):

**Bribery:** the bartering of money, gifts, or favors to obtain personal gain or influence.

**Extortion:** occurs when an official asks for a bribe or favor in return for conducting a service.

**Judicial fraud:** results in a decision that is based not on the “merits” of a case, but because of outside influence, such as bribery, extortion, exchange of favors, ect.

**Influence peddling:** the misuse of one’s power or position to bribe or receive favors from influential people.

**Conflicts of interest:** occurs when an official has personal connections to the decision or policy being decided on.

Transparency International defines judicial corruption as “any inappropriate influence on the impartiality of the judicial process by any actor within the court system” (2007, xxi). The organization includes in its definition any acts that abuse public funds allocated to the judiciary, insufficient enforcement of judicial decisions, and the politicization of judicial appointments (2007, xxi-ii). Mary Noels- Pepys defines judicial corruption as the misuse of power for private gain, relating to “acts or omissions that constitute the use of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions” (TI, 2007, 3).

Buscaglia identifies two types of judicial corruption: administrative and operational. Administrative corruption transpires when administrative employees of the courts breach procedural rules for personal gain (Buscaglia, 2001, 235). Operational corruption is primarily concerned with politically and economically driven court decisions by judges (Buscaglia, 2001, 235). Bucaglia also notes that operational corruption can occur between justice institutions—

meaning that corrupt activities can take place “between” the courts and other institutions, including the police, prosecutors, and prisons (TI, 2007, 68). As can be seen, corruption is multifaceted in nature, and it is crucial to define the various components of general corruption before surveying the vast literature on corruption.

## **II. Causes of Corruption and Judicial Corruption**

Before delving into the various causes of corruption, it is important to note that many of the causes of general corruption are also causes of judicial corruption. Often, once one sector of a country’s institutions becomes corrupt, corruption will spread to become endemic in other sectors. Therefore, it is also important to address the causes of general corruption in order to pinpoint why some countries are more prone to judicial corruption than others; one cannot address one without the other. Part II of the literature review will be broken up into two sections: causes of corruption and causes of judicial corruption.

### **I. Causes of Corruption**

#### **A. Electoral and Government Systems**

While there are many different types and variations of electoral systems, the general consensus amongst scholars is that the type of electoral system adopted by a country can play a role in curbing or enhancing corrupt activities. The electoral systems that will be discussed in this literature review are presidential, parliamentarian, proportional representation (PR), and majoritarian systems.

A majority of scholars believe that closed-list PR systems are more likely to attract corrupt practices than open-list PR systems. Uslander notes that closed-list PR systems “break down [the] system of direct constituency representation” in that it “disrupts the linkage between legislatures and their districts” (2008, 35). This is because the electorate cannot vote directly for a candidate, but instead must vote for a list of pre-chosen party candidates, which, Uslander

argues, places too much power in the hands of party leaders (2008, 35). Party leaders can instead choose candidates for the ballot that they believe will fulfill the mandate of the party instead of those that are equipped to run for office. There is also a lack of accountability that is associated with closed-party PR lists because of the voting process. Closed-list PR systems can lessen the expectation that legislators must perform well in order to get re-elected, since candidates are placed on the ballot due to party loyalty and not past performance (Rose-Ackerman and Palifka, 2016, 347). Whereas in an open-list PR system, the electorate votes for a party and then has the opportunity to rank candidates, taking control away from the party leaders (Rose-Ackerman and Palifka, 2016, 347).

In general, plurality systems are believed to be the most effective in decreasing corruption levels. Plurality systems require that the electorate votes for a single candidate, and the candidate with the most votes wins (Rose-Ackerman and Palifka, 2016, 346). Rose-Ackerman and Palifka state that in plurality systems, “party leadership does not have as much power over the individual legislators so the locus of rents is more evenly divided between the party leadership and individual legislators” (2016, 347). The authors also note that plurality systems are better for controlling rent-seeking because the monitoring system set in place is much more effective since leaders are held directly accountable to their constituents through the voting process (Rose-Ackerman and Palifka, 2016, 347). Tavares writes that this caveat of plurality systems is especially important for incumbents, who can often be in power for many years without any real political competition (2007, 1057).

What remains unclear, however, is which system—parliamentary or presidential—fares better when tasked with deterring corrupt practices. The literature on this topic varies, and there are many studies that seem to advocate for both. Lambsdorff (2005, 23) notes that while previous

studies indicate presidential systems are less effective in curbing corruption, parliamentary systems can actually prove to be ineffective as well if political parties are weak or unorganized. Therefore, in order to prove effective, parliamentary systems must have strong, organized political parties capable of generating competitive elections. In regards to the effect of parliamentary and presidential systems on the judiciary, both regime types can interfere with the independence of the judiciary. This occurs through overreaching mandates pertaining to the nomination of court judges, which can become politicized and can negatively impact the judiciary's efficiency and independence—another sign of high judicial corruption levels. The degree of power granted to the Head of Government or Head of State in overseeing the judiciary can also affect corruption levels. See Part II, Section A of this literature review for more information regarding the politicization of the judiciary. Overall, it appears that closed-list PR systems are more effective in curbing corruption, while the type of government system can show to have mixed results. This will be crucial in the selection of case studies, as a majority of CEE countries have parliamentary systems, but there are some countries that are outliers.

## **B. Growth Rates**

Studies have shown that growth rates, measured in GDP/Capita, have an effect on corruption levels, but that the magnitude of the effect is multifaceted. In a study by Aidt, Dutta, and Senac, a relationship between regime type, growth rates, and corruption was found. The authors identified two types of regimes in their study: Regime G is a regime in which economic growth “can reduce corruption by improving the incentives of rulers...conversely the model also allows corruption to reduce growth” (2008, 197). The authors note that the relationship between corruption levels and growth rates is “self-reinforcing” and “endogenous”, meaning that high growth rates reduce corruption, which “in turn, enhances the growth performance of the



economy” (2008, 197). Regime B has ineffective and weak institutions where citizens lack control over their politicians, and thus corruption is rampant and “growth no longer has a benign impact on the level of corruption” (Aidt, Dutta, and Senac, 2008, 197). This study demonstrates that regime quality is important when discussing growth rates and corruption, and that “within a particular governance regime, economic growth and corruption are jointly determined and the corruption/growth relationship is regime specific” (Aidt, Dutta, and Senac, 2008, 209).

Goel and Nelson (2010, 440) also conducted a comprehensive study that tested multiple variables on corruption, indicating that greater economic growth appears to decrease corruption levels. Rose-Ackerman and Palifka (2016, 33) note that growth as a result of corruption is destabilizing as well, particularly if it does not result in the growth of other sectors—such as education, health care, and public infrastructure. The authors argue that this type of corruption induced growth can also lead to volatile levels of inequality, which in turn become endemic and can decrease economic growth overall (2016, 33). Johnston (2005, 28) comments, “some countries remain poor because they are corrupt, but they may also have extensive corruption because they are poor.”

However, the relationship between GDP/capita and corruption is not as clear-cut as it appears for some scholars. Most of the research on the relationship between these two variables indicates that there is a “mutual causality” between GDP and corruption levels (Ludic et al., 2016, 362). There are outlier trends in the relationship between corruption levels and GDP per capita that make finding a clear relationship between the variables difficult. Ludic et al., state in their research:

if we examine the relationship between perceived corruption level and economic growth rate across countries, we can see that growth rates diverge more for countries with high-level corruption. In other words, while many highly corrupt countries have low economic

growth rates, there are countries that have achieved rapid economic growth under rampant governmental corruption. (2016, 364).

The authors note that it is possible for countries with rampant corruption problems to experience unexplained economic growth over a span of time (Ludic et al., 2016, 364). A majority of the authors' research is dedicated to determining if there is a certain time period in which corruption and GDP levels show causality (Ludic et al., 2016, 362). Their research indicated, "the mutual influences of corruption and GDP are most pronounced in the so called medium-term period...[at] six to ten years" (Ludic et al., 2016, 362). The authors state that this finding implies that when "you change one of these two indicators [GDP and corruption levels], it takes between six to ten years for this change to reflect the strongest effect on the change of the other indicator" (Ludic et al., 2016, 362). The findings of Ludic et al., are important for understanding why countries that have high levels of economic growth can still be relatively corrupt. These findings could help explain why certain EU member countries in the CEE region that are economically well-off can still struggle with high levels of judicial corruption.

### **C. European Union Leverage**

Literature on the topic of EU leverage and corruption levels is extensive and robust. In general, the consensus amongst scholars on this complex relationship is that EU membership and candidacy status is effective in lowering corruption levels, but only under certain circumstances. Additionally, EU leverage over candidate countries appears to be the most effective during certain times throughout the long accession process. Overall, literature indicates that the secondary effects (or benefits) of EU membership can lower corruption levels, particularly through the creation of healthy economies and viable institutions. According to Vachudova, "liberalization of the economy, including privatization and the promotion of new small and medium enterprises, reduces the reach of state officials in the economy" (2009, 50). EU

membership also promotes the “reform of state institutions—including greater transparency and efficiency” which can “constrain the opportunities for corruption across different levels of government” (Vachudova, 2009, 50). Additionally, joining the European Union can also dramatically increase member countries’ growth rates (Vachudova, 2005, 70). If countries have greater growth rates, it in turn is correlated with lower corruption levels.

The long-term implications of EU policy on maintaining low corruption levels and the implementation of reform are heavily debated. Some view the European Union as ineffective in lowering corruption levels in the long run because often implementation of European Union initiatives after adoption remains low. Vachudova (2005) distinguishes between the EU’s “active” and “passive” leverage over EU member states. The EU’s active leverage refers to the Union’s ability to not only ensure that candidate states fulfill the necessary EU requirements, but also to guarantee the effectiveness of reforms. Vachudova states that the active leverage of the EU is essential for maintaining reforms post-accession because “as candidates move through the pre-accession process towards membership, it becomes less likely that the polity will slide back by becoming less competitive or rolling back reform” (2005, 106). Also, the fact that EU conditionality acts as the enforcement mechanism for compliance ensures that countries failing to meet the EU’s standards will be prevented from reaching the next “carrot” of EU membership (Vachudova, 2005, 138). Thus countries have an incentive to demonstrate efforts at adopting reforms that can have positive effects on corruption levels, including those of the judiciary.

While the minimal positive effects of EU membership and leverage cannot be denied, the consensus is that EU leverage is only effective in curbing corruption levels up until a country reaches a certain point in the accession process. The European Union begins implementing its conditionality policies with potential candidate countries to ensure that states adhere to the

Union's strict policies. EU conditionality is believed to be a relatively successful tool for lowering corruption, as substantial policy and reform changes must be made so that a country can move on to the next "carrot": beginning formal accession talks and setting a date for accession. However, it appears that once countries accede to the EU and the "carrot" is achieved, the power of EU leverage is limited, as "threats from the EU start to lose their power once the country gets into the Union because the strongest conditionality is attached to membership itself" (Garbbe, 2014, 42). Dimitrova would concur, stating that EU leverage is the most "successful in stimulating CEE states to introduce reforms while they were preparing for accession by setting reform objectives as conditions for membership" (2010, 137). Vachudova (2009, 60) explains that the application of EU leverage must be strategic and should be applied "well before accession...[as] experience suggests that once negotiations for membership have gained momentum, it is already too late to apply strong conditionality and/or turn back...". Additionally, "rule adoption" is the strongest in candidate countries and then "expires" when countries accede to the EU (Dimitrova, 2010, 137-8). Often countries will renege on their commitments after accession, following three possible "outcomes": full "reversal" of new rules, "institutionalization"—or as Dimitrova states, when "formal and informal rules align", and, lastly, "empty shells" or when "actors ignore the new rules, [and] parallel informal rules are used" (2010, 146).

Domestic factors often play a role in augmenting the effect of EU leverage on corruption levels. Borzel states that research on the effect of EU membership on the domestic climate is difficult to evaluate (2016, 79). Borzel notes that "EU conditionality has promoted democratization where the political costs for the incumbent were not prohibitive, threatening their political survival, and veto players were not powerful enough to block domestic reforms"

(2016, 79). When countries are conducting corruption reform, often there is political resistance from opposition parties that results in corruption reform being derailed. Borzel writes that EU conditionality and membership “may help buy off domestic veto players that bloc the domestic reforms the EU demands for the costs they incur” (2016, 79). Public opinion surrounding accession to the EU is also a critical component, as higher public approval for EU membership leads to better “traction” for EU accession as a “shared goal in society” (Garbbe, 2014, 44). Noutcheva and Aydin-Duzgit argue that the best results on corruption reform efforts take place when “the EU incentives for reform are aligned with the ruling elites’ domestic interests in the EU-advocated institutional and legislative changes...” and this when the most change in the rule of law occurs (2012, 62). There is difficulty in discerning whether or not EU membership can affect corruption levels, particularly in candidate countries, because if the political party in power is not fully behind reform then this may create “non-reform or patchy reform that amounts to marginal advances in the rule of law” (Noutcheva and Aydin-Duzgit, 2012, 62). In general, the effect of EU leverage on lowering corruption levels appears to depend heavily on domestic context. It will be important to account for the influence of domestic factors on overall EU conditionality in the case study chapters in order to get a clear picture of the dynamic relationship.

## **II. Causes of Judicial Corruption**

### **A. Judicial Independence**

Judicial independence is an important variable that must be addressed in order to discern why certain countries’ judiciaries are more corrupt than others. A judiciary is described as being independent if it has full autonomy from a “central authority” (Priks, 2011, 77). This means that in many cases the judiciary is not politicized or under the influence of an outside institution, such

as the legislator or the executive. Rose-Ackerman and Palikfa (2016, 383) write that if a country has a truly functional, independent judiciary it can lead to higher levels of growth, lower corruption levels, increased protection of human rights, and more political freedom. An independent judiciary is also essential for checking the power of the state and “fraudulent private actors” who engage in rent-seeking (Rose-Ackerman, Transparency International, 2007, 16). Judicial independence encourages judges to be impartial so that they do not hand out judicial decisions that are biased or influenced by external actors, such as politicians or other actors within the judiciary.

One important aspect of judicial independence is ensuring that judicial appointments are merit based and not patronage based. If a judge is appointed solely to carry out the purposes of a politician or a political party, this could potentially politicize the judiciary and the decisions that it hands out. Transparency International in its 2007 Global Corruption Report on judicial corruption concluded that one of the most common issues seen in most countries with judicial corruption are improper judicial appointments (xxv). Appointments of judges vary by country; however, it is necessary that a system of checks and balances be in place to guarantee that a politician or executive does not have control over the process in its entirety. Noel-Pepys points out that in many countries, the president or a body of individuals appoints and promotes judges without any restraints, including transparency of the selection process or eligibility requirements (Transparency International, 2007, 4). Hence, in order to safeguard the autonomy of the judiciary, an impartial body must act as a check on the power of the entity granted authority to nominate judges, otherwise judges will be subject to the control of politicians and have no incentive to uphold the law (Noel-Pepys, Transparency International, 2007, 4). However, too

much interference by the legislature in judicial appointments can also lead to a decrease in efficiency, as often opposition parties will block candidates out of political spite.

Worth mentioning is the dynamic relationship between political competition and judicial independence. A common concept that appears throughout literature on judicial independence is insurance theory, which postulates that politicians will uphold the autonomy of the judiciary because courts act as “potential insurance for politicians” (Randozzo et al., 2016, 584). Many scholars disregard this theory, though, advocating for different approaches to viewing this relationship. Aydin’s 2013 study on judicial independence and political competition argued that there is a difference in cost-benefit analyses of politicians seeking to undermine judicial autonomy in democratic and developing democracies (106). According to Aydin, politicians in developing countries, due to their “high levels of corruption, weak party systems and high electoral volatility”, could reap more “short-term benefits” from undermining judicial autonomy than they would “long-term benefits” amassed from “high levels of judicial independence” (2013, 107). Politicians in countries with high political competition are also tasked with the daunting task of being re-elected, thus having the judiciary in their pockets can help undermine the authority of the opposition while simultaneously allowing governing parties to carry out their political interests (Aydin, 2013, 111-12). Brown, Touchton, and Whitford (2011, 1524) note that veto players play an integral role in creating political polarization, which can negatively affect corruption perceptions. Scholars also believe that “larger numbers of viable political parties will possess higher levels of judicial independence...” (Randazzo et al., 2016, 589). Thus, a key aspect of political competition, in order to be considered healthy, is that parties must be viable and capable of setting comprehensive policy agendas.

Finally, it is important to note that destabilizing, or “confrontational”, political competition can often play a role in inhibiting reform efforts in democratizing countries. This is because political elites often sabotage or undermine efforts at building strong institutions in order to consolidate their power. In Mavrikos-Adamou’s study on the rule of law and democratization in Albania, the author found that the “confrontational style of politics that permeates the parliament is largely due to the political parties, which are leader-dominated and which have created divisive party politics” (2014, 1162). This causes the minority party to block legislation, because its role in government has been “reduced” to being a veto player (Mavrikos-Adamou, 2014, 1162). The author argues, “Indeed, political leaders play a decisive role in influencing the political environment within which democracy building takes place, and can either be supportive agents enhancing the development of democratic political institutions, or, contrarily, they can stifle their functionality” (2014, 1162). Furthermore, the author found that because Albania’s parties are not built heavily on ideologies, this leads to political elites answering political issues with “cronyism, nepotism and patron-clientelism, which continued unabated” (Mavrikos-Adamaou, 2014, 1162). A similar finding was made in another post-communist country, Romania, as the country also lacks parties with strong ideological platforms, and thus politics is better “characterized by variable geometry alliances and, moreover, endemic and uncontrollable parliamentary migration” (Iancu, 2015, 154).

It is clear, then, that the dynamic relationship between politicians and judicial actors is extremely important when discussing judicial corruption levels. If countries do not have insulated judiciaries, it is more than likely that politicians will use the courts for personal gain. Political competition also appears to play an important role in stimulating political interests, which are often not conducive to ensuring the autonomy of the judiciary.



## **B. Judicial Salaries, Promotions, and Resource Investment**

The failure of a state to adequately invest in the judicial sector is postulated to increase judicial corruption levels. Yang and Erichs state that if a judiciary is underfunded, judges will find alternate sources of monetary compensation, either through bribes or rent-seeking (Transparency International, 2007, 49). Promotions, including salary increases and added benefits, encourage judges to uphold the integrity of the law, as well as “attract and retain high-quality and qualified candidates” (Yang and Erichs, 2007, 49). Yang and Erichs state, “establishing transparent, merit-based criteria for promotion helps to prevent career progression based on political affiliation or other inappropriate influence” (Transparency International, 2007, 51). Rose-Ackerman and Palifka draw parallels between poorly paid judges and police, stating that when a country’s police force receives inadequate pay, it produces an “outsider mentality” because they feel disregarded by the state for their work so they augment their incomes with outside revenues from bribes (2016, 82).

If judges do not receive adequate pay corruption can be described as a “survival strategy”(Rose-Ackerman and Palifka, 2016, 169). However, Svensson notes that so-called “wage incentives” will only go so far in curbing corruption, arguing that the solution works only if two requirements are met: “the bribe being offered (or demanded) must not be a function of the official’s wage; and the cost of paying higher wages must not be too high” (2005, 33). Noel-Pepys also states her doubts about the benefits of increasing the wages of judges, arguing, “even where incidents of illicit payments to judges have clearly been reduced, the public continues to believe that corruption persists at the same level” (TI, 2007, 6). She points to Georgia as an example of this, since the country increased its salaries for judges by 400 percent, but the general consensus about corruption among the populations was measured to be the same as before the

salaries were increased (TI, 2007, 6).

One way a state can properly invest in its judiciary is to provide substantial training to judges, prosecutors, and court personnel. Buscaglia notes that training for prosecutors and judges when “coupled with performance-based indicators used for appointments and promotions, generates an institutional environment that discourages the application of random informal rules...” (Transparency International, 2007, 74). Rose-Ackerman and Palifka argue that an important aspect of a “modern bureaucratic state” is proper separation of roles, but note that in order to properly separate roles, the state must first provide workers with adequate pay so that they feel incentivized to work (2016, 166). Overall, the benefits of properly investing in the judiciary are apparent, as failure to do so can lead to judges engaging in corrupt practices, either to supplement their incomes or to cater to the interests of elites.

### **C. Transparency, Civil Society, and the Media**

In order to shed light on the corrupt practices occurring within a state and its institutions, a country must not place restraints on civil society and the media. Freedom of the press, in particular, is necessary in order to ensure that corrupt practices can be published without fear of repercussions. However, if the media is also heavily politicized, this poses problems. Kurkchian warns that politically motivated media can often times engage in covering up corrupt acts if they are in the pockets of politicians (Transparency International, 2007, 106). If media is “constructive” and trusted by society, Kurkchian states that it can make an “impact on how people view the world, how they behave toward it, and how they feel about their role in it” (TI, 2007, 106). However, Rose-Ackerman and Palifka (2016, 431), note that increasing press freedom is not enough; the media must be competent and credible otherwise the public will have no incentive to believe what the media writes.

Treisman states that freedom of association is also necessary for curbing corruption because it provides public interest groups and reporters with the opportunity to expose corrupt practices (2000, 404). Freedom of association also allows for civil society to thrive and function properly. If the government places limitations on civil society, it will be difficult for groups to organize, hold meetings, or publish reports on corruption. Civil society groups can also monitor institutions they believe to be corrupt to expose them (Treisman, 2000, 404). Groups will not actively engage in reporting abuses if they feel that they will face negative repercussions by the government. Studies have shown that countries with stronger civil societies are less prone to corruption than those with weaker civil societies (Themudo, 2013, 65).

When the media and civil society groups work together, they are extremely effective in combating corruption. Themudo argues that freedom of the press is “critical in civil society efforts to generate public pressure against corrupt officials” because “civil society’s impact on corruption should be partly conditioned by the level of press freedom” (2013, 65). Themudo’s study proved that civil society groups in countries with strong press freedoms typically were more effective in curbing corruption, but civil society groups in countries with weaker press freedoms had an insignificant effect on corruption levels (2013, 65). The main role of civil society groups, according to Themudo, is to inform the public and expose corrupt acts, and without the media, many civil society groups would be unable to function (2013, 69). This is because “civil society actors are unlikely to reach an audience that goes beyond their immediate supporter and, consequently to generate enough public pressure and political will to change the status quo” (Themudo, 2013, 69).

Transparency in the judicial system is also necessary to combat corruption. Transparency International notes in its 2007 Global Corruption Index that a common issue countries with high

levels of judicial corruption face is a lack of transparency in its court processes (xxv). The organization adds that an overall lack of transparency prevents the media and civil society groups from carrying out their primary duties of monitoring the judiciary (2007, xxv). Buscaglia states that when countries allow for proceedings to be public, there is a “positive multiplier effect on lowering corruption” (TI, 2007, 72). The incentive to conduct corrupt practices diminishes with public proceedings, since judges are legally required to provide rational for judicial decisions (Buscaglia, TI, 2007, 72). Public hearings also allow for NGO’s, civil society groups, and the media to be present to hear court decisions, which increases transparency and allows for outside groups to monitor the efficiency and effectiveness of the court (Buscaglia, TI, 2007, 74). Voigt (TI, 2007, 297) argues that if a country has a complicated judicial system—meaning that the system is opaque and has complicated procedural rules—, this will lead to a decrease in transparency because the probability of being discovered decreases, allowing corrupt practices to go unnoticed (Voigt, TI, 2007, 297). E-governance can also be used to increase transparency. Rose-Ackerman and Palifka (2016, 139) argue that e-governance practices—such as, the publishing of laws/decisions, online applications, or documents—can also be effective in reducing corruption because they increase accountability and the dissemination of information. Citizens can also have a more interactive relationship with government, thus increasing overall trust in government institutions (Rose-Ackerman and Palifka, 2016, 145).

#### **D. Accountability and Discipline**

Judges in corrupt societies must be held to a higher standard in order to decrease corruption. It also goes that judges who engage in corrupt activities must receive proper discipline otherwise they will feel no incentive to uphold the law. Transparency International (2007, xxv) states that “unfair or ineffective processes for the discipline and removal of corrupt

judges can often lead to the removal of independent judges for reasons of political expediency”. Noel-Pepys notes that in some systems, judges who want to uphold the laws often are not guaranteed promotions or positive evaluations (TI, 2007, 6). In most countries, judges have the option to either carry out the wishes of high-level officials or face negative repercussions.

Piana and Rogowski warn of a phenomenon called “negative accountability”, or the “prevention of accountability on behalf of the political and the social system” (2010, 27). This type of accountability means that judges are appointed for “good behavior” and their new tenure protects them if they accept bribes or engage in other corrupt practices (Piana and Rogowski, 2010, 27). Therefore, promotions, if not based on merit, can further entrench corrupt practices in the judicial system. The authors argue instead that there must be institutional accountability that emphasizes proper “promotion, selection, and disciplinary control” of judges, which can “give citizens certainty with regard to the competence and impartiality of the judicial staff” (2010, 29).

### **E. Legal Systems**

There also appears to be a correlation between the type of legal system developed by a country and its level of corruption. Most literature focuses on two types of legal systems: common law and civil law systems. Common law systems, according to Rose-Ackerman (TI, 2007, 20-1), are built off of the following components: use of precedence in interpreting and applying law; public trials where judicial power is “checked by lay juries who decide the facts in many criminal and civil cases”; a heavily politicized judicial nomination process; and lifetime appointments of federal judges. Civil law systems differ significantly: they do not use precedence, but instead include written opinions without dissents; they frequently do not use jury trials; and judges act as “career civil servants who have passed a competitive exam soon after completing their legal training” (Rose-Ackerman, 2007, TI, 19). The judges in civil law systems receive promotions from high-level officials or judicial councils, and the civil service sets

judges' salaries (Rose-Ackerman, 2007, TI, 19-20). Rose-Ackerman and Palifka (2016, 386) also note that in civil law systems, judicial independence is often derived from “professional training, oversight, and career paths”.

Cowdery states that in common law systems it is usually the case that judges are “appointed from the senior ranks of the practicing profession and may come from private practice” while judges in civil law systems frequently switch between prosecuting and judging roles (TI, 2007, 81). The training of judges in these two systems varies differently and offers their own individual benefits and drawbacks. Civil law systems usually include training that takes place outside of the judiciary, but in common law systems, an emphasis is placed on obtaining candidates with a background in legal scholarship, private practice lawyers, and attorneys (Piana and Rogowski, 19).

Rose-Ackerman and Palifka (2016, 286) note that many judicial decisions are “made behind closed doors, and hierarchical corruption is a real risk”. The authors also state the use of lay judges—a feature of the common law systems—can curb corrupt practices (2016, 386). The fact that judges salaries in civil law systems are set by the civil service creates incentives to augment salaries through bribe-taking (Rose-Ackerman and Palifka, 2016, 386). However, a drawback of the common law system is that due to the often-politicized nomination or promotion process of the system, it is likely high-level officials could influence judges and their decisions (Rose-Ackerman and Palifka, 2016, 387).

### **Selection of Hypotheses**

After completing a survey of the literature, four hypotheses have been created to test the three independent variables featured in this study (judicial independence, EU leverage, and media freedom). There is clearly an overabundance of literature available on judicial corruption,

and covering all of the relationships commonly associated with judicial corruption would require an entire book. In order to narrow this study, I have chosen two hypotheses for judicial independence, one for EU leverage, and one for media freedom.

**H1: Countries with high levels of destabilizing political competition will have higher levels of judicial corruption.**

**H2: Countries with parliamentary systems will have lower levels of judicial corruption.**

Due to the fact that judicial independence is a broad, overarching variable, I have selected two variables to measure this concept: government system and levels of destabilizing political competition. The type of government system adopted by a country can affect judicial corruption levels because it determines the distribution of powers between the prime minister and the president. As a result, whichever political entity is granted the most power over the judiciary can misuse its authority to place pressure on the institution, either to consolidate the power of his/her party or for personal gain. Destabilizing political competition often results in parties engaging in intense competition in an attempt to further their respective political agendas, which often places the judiciary in the middle of the conflict as a pawn of political elites.

The general consensus amongst scholars today is that high levels of political competition often lead to higher levels of judicial corruption, particularly in developing countries, such as those in the CEE region. The relationship between political competition and judicial independence becomes problematic when the competition between parties is destabilizing, meaning that parties are not ideologically focused, but rather are driven by personalities and divisive political fighting. It is this destabilizing political competition amongst the governing party and the opposition that leads to poor democratization of institutions, such as the judiciary. The influence of veto players and viable political parties also contributes to the influence of political competition on curbing judicial corruption levels. Romania and Albania are arguably on

two different “levels” of democratic development, with Romania being considered a democracy and Albania being classified as a developing democracy. Thus, it will be particularly interesting to see if the theories presented in the literature will be confirmed in the case studies.

Literature on government systems proves to be indecisive. Presidential and parliamentary systems both have their drawbacks, and it is clear that certain political climates will perpetuate corruption problems relative to others. Additionally, the two case studies in this chapter—Albania and Romania—have two different systems in place. Albania is technically classified as a parliamentary system, but has a stronger executive than what is common in parliamentary systems. Romania is a semi-presidential system, thus it has characteristics of both presidential and parliamentary systems, as well as an equal distribution of powers between the president and prime minister. A majority of the countries in the CEE region—and Europe in general—have parliamentary systems. Studies on the effect of parliamentary systems on judicial corruption seem to point to the fact that parliamentary systems can be exceedingly effective as long as parties within the given country are viable and capable of being competitive in elections. Since Albania is theoretically a parliamentary system, and Romania also has aspects mimicking those found in parliamentary systems, I hypothesize that countries with parliamentary systems will show to have lower corruption levels.

**H3: European Union (EU) member and candidate countries will have lower levels of judicial corruption.**

The overall benefits of EU membership and candidacy status on judicial corruption appear to be positive, although many of these benefits are accrued from secondary effects, such as economic liberalization and better promotion of political rights. Many scholars admit that EU leverage is only effective up to a certain point. Theoretically speaking, EU membership should improve judicial corruption values, but the magnitude of reforms is also heavily dependent on



domestic factors, such as political will and public opinion. Overall, EU leverage through conditionality is meant to propel forward reforms. Now, whether EU member or candidate countries go on to implement them is another story and will be further evaluated in the case studies presented in this paper. However, it appears that the dangling of the EU accession “carrot” is effective and can demonstrate positive results, but under certain circumstances.

**H4: Countries with low levels of media freedom will have higher levels of judicial corruption.**

Scholars agree that media freedom is an essential component of a healthy democracy and, in effect, promotes low corruption levels. Without the media, many corrupt practices would go un-reported, thus decreasing transparency and allowing corruption to become endemic. The media is supposed to act as a watchdog, reporting on corrupt practices of politicians and members of the judiciary. If media freedom is restricted, politicization of the media often occurs, leading to self-censorship. Essentially, low media freedom reinforces corruption and leads to an overall erosion of public trust in the judiciary. Thus, in order for corruption levels to be low, a country must have a media sector that is free from politicization and values the importance of investigative journalism.

## **Chapter 2: Methodology**

Chapter 2 seeks to outline the methodology used in this qualitative study. I will justify my decision to use a case study methodology and the selection of Romania and Albania as case studies. A section evaluating Transparency International's (TI) judicial corruption indicators will be included. Most importantly, this chapter will operationalize the three independent variables under consideration, as well as the dependent variable. Tables will be used to convey important statistical data necessary for understanding trends in the Central and Eastern European (CEE) region for judicial corruption and other relevant variables.

### **Why Case Studies?**

This study examines the causes of judicial corruption in Albania and Romania in an effort to understand the roots of this phenomenon at the regional level. A case study methodology has been chosen to discern which independent variables, as discussed in the literature review, have the strongest impact—either positive or negative—on corruption levels in the selected countries. The main purpose of this study is to draw out causal mechanisms of judicial corruption in two selected countries, and this cannot be done conclusively through a quantitative analysis. Typically, quantitative studies rely heavily on a large-N analysis, but this is not feasible given the size of the CEE region. There are simply not enough countries to create a quantitative model capable of producing statistically significant results. In addition, given the specificity of the form of corruption being analyzed in this study, it is difficult to create a comprehensive data set. Many data sets merely measure general levels of perceived corruption and do not create sets that break down corruption levels by type or form of corruption. Judicial corruption can also only be measured indirectly, resulting in minor validity issues. This will be discussed further in a later section of this chapter.

A quantitative cross-unit analysis can only tell half of the story. Literature suggests that these studies are “thin” in nature, meaning that they only explain “a portion of the variance with respect to a given outcome...at a very general level” (Gerring, 2004, 348). Qualitative analyses have a focused “depth of analysis”, particularly because they focus on the details of relevant cultural or historical examples, as well as the robustness of the specific causal relationship being measured or explained (Gerring, 2004, 348). The overall scope of this study is the broader Central and Eastern European region. Case study analyses are used to connect trends found at the state level of analysis to the regional level. This is known as the so-called “representativeness” phenomenon (Gerring, 2004, 348). The countries of Central and Eastern Europe rank among the most corrupt countries in the world (See Table 1 for a cross-national regional analysis), but they differ on several economic, political, and institutional variables. Thus, using case studies to delve deeper into the three independent variables will be essential for understanding if certain causes are state-specific, or if the findings of this study can have implications for broader, regional trends.

The method of process tracing will be used to determine causal mechanisms within individual case studies over time. Collier notes that process tracing is particularly useful in case study methodologies because “it can contribute decisively both to describing political and social phenomena and to evaluating causal claims” (2011, 823). Process tracing is also beneficial when conducting small-N analyses because the method relies on “matching and contrasting of cases—designs which have great value, but whose contribution to causal inference urgently needs to be supplemented by with-in case analysis” (Collier, 2011, 824). The time component of process tracing will prove to be valuable because it evaluates cases or historical events over a span of time (Collier, 2011, 324). This will be exceptionally helpful when evaluating the effect of EU

membership on the dependent variable, as it allows for an in-depth examination of pre and post-accession historical and cultural examples. Furthermore, due to inconsistency in some theories pertaining to judicial corruption and its causes, there is ambiguity on certain causal mechanisms. Bennett and Elman argue that process tracing increases the confidence of case studies if the discovery of causal mechanisms proves to be contradictory or “inconsistent with alternative explanations” (2006, 460).

However, it should be noted that a limitation to using a case study methodology is that over-generalizing causal relationships can lead to an incomplete or inaccurate analysis at the regional level (Gerring, 2004, 348). This arises when causal relationships are drawn from a single unit and are “assumed to be true” for a larger population (Gerring, 2004, 348). Seawright and Gerring warn that background cases can negatively influence the determination of causal relationships due to an unclear “distinction between the case and the population it surrounds” (2008, 294). In an effort to account for this limitation, the method of process tracing should help to determine if a causal relationship is spurious or significant, as variables will be tracked over time. If a relationship remains prominent throughout the narrative presented in each case study, it is quite possible that it is not spurious and is in fact significant.

### **Evaluation of Transparency International Indicators**

Before delving into the remaining sections of this chapter, it is worth noting the limitations of using Transparency International’s corruption indices for measuring judicial corruption. Like any index, TI’s Global Corruption Barometer has its drawbacks. It has minor validity issues and scholars have criticized some of the agency’s methods for collecting data. This being said, it is one of few consistently reliable and comprehensive corruption indices available (the other being the World Bank Group’s World Governance Indicator). TI’s Global

Corruption Barometer is the only corruption measurement that will be used in this study to measure the dependent variable. The World Bank Group's World Governance Indicator will not be used because it does not have an indicator that measures judicial corruption specifically. The dataset does measure public corruption levels (i.e., pertaining to the executive branch) and general rule of law scores, but does not go as far as to solely isolate judicial corruption levels. The wide range of country availability is a benefit of this dataset, but if it does not have the data relevant for measuring the dependent variable it cannot be used. Transparency International is the best indicator available for measuring judicial corruption specifically.

First, I will list the drawbacks of using this particular corruption index. Today, corruption scores are measured indirectly by obtaining survey data from populations. Indirectly measuring corruption values can only account for perceived levels of judicial corruption since the variable itself is qualitative in nature. Judicial corruption is a phenomenon and when being coded for, includes many different measurements—including judicial independence, effectiveness of the judiciary, and rule of law scores (see Freedom House's 2016, "Methodology: Freedom in the World 2016"). Due to the complex nature of the corruption variable, it is impossible to completely quantify this variable into an ordinal number. Rose-Ackerman and Palifka note TI's use of "cardinal units" as opposed to a "unit-less constructed number that tries to capture a country's position on a continuum from high to low levels of corruption" as being particularly important when discussing the organization's effectiveness in quantifying corruption values (2016, 20). It is hard to normatively judge corruption scores if presented on a scale of 1-5, as they are often open to interpretation, leading to inconsistency in interpretation.

Perceived corruption scores pose a possible validity issue because the scores are tabulated from public surveys. Often the survey population provides biased or incomplete answers to

survey questions. Rose-Ackerman and Palifka (2001, 16) note that even though populations are told not to take into consideration their country's previous performances on TI corruption indexes, many replies end up being biased because survey populations rely on previous experiences with corruption that shape their answers. The authors also state, "expectations are often based on previous experience, so if a particular public service has required bribery in the past, those seeking the service will anticipate that this practice will continue" (2016, 16).

Transparency International indices do not calculate corruption values for every state in a particular region. Rather, the organization varies the countries it studies in each publication resulting in an incomplete data set that can affect a researcher's decision to use a quantitative analysis when studying judicial corruption. Furthermore, Johnston expresses his concerns with corruption indices due in part because, "corruption indices impose a common model upon all cases and are not particularly sensitive to qualitative variations" (2005, 4). TI's Global Corruption Barometer asks respondents to categorize responses by institution, meaning that each respondent can provide scores for the judiciary or the police. This suggests that if a researcher were to use these values, it could not provide for a valid account of what proportion of the overall corruption score is due to high judicial or political corruption levels. Rose-Ackerman and Palifka agree, stating that typically these indices "do not directly measure the volume of bribes, the incidence of corruption, or its impact" (2016, 19).

Although the index has limitations, it is the best available option for this study. While survey responses could prove to have minor validity issues, answers for TI indices are in fact accounts of populations' direct experiences with corruption and can provide for a substantial overview of relevant examples of corruption in countries. Scholars find value in the TI indices because they provide researchers with a way to quantify a variable that is, in its very nature,

multifaceted. Judicial corruption is comprised of numerous sub-variables, and using a TI score is much simpler than trying to combine multiple variables into a single statistic. The regional diversity of the indices is also excellent for developing cross-national or regional analyses. TI's Global Corruption Barometer in particular is unique because it asks researchers to break down their evaluation of corruption by institution (TI, 2016, "Global Corruption Barometer 2010/11). Finally, while Albania is not featured frequently in the organization's Global Corruption Monitor, the organization does publish reports on the country's progress—with the latest having been released in 2016—thus it is possible to find overall discussions about judicial corruption in Albania. Romania is regularly featured in TI's Global Corruption Barometer, and so judicial corruption variables are widely available for this country.

### **Case Study Justification**

Central and Eastern European (CEE) countries are among the most corrupt countries in the world. Transparency International regularly assigns CEE countries rankings indicating that judicial corruption is an ongoing concern in a majority of these countries. Transparency International's corruption indices assign countries ratings on a scale of 1 to 5. If a country is assigned a ranking of 1, it can be interpreted that a country is not corrupt. A rating of 5 indicates that a country is extremely corrupt. These are the only classifications that Transparency International provides, thus it is necessary to infer classifications for countries that lie between these points. For the purposes of this study, any number ranking above the halfway point (2.5) through 3.9 is classified as moderately corrupt. Any number from 4.0 to 4.9 will be classified as highly corrupt. Any ranking from 0 to 1 is considered not corrupt, and a country scoring a ranking from 1 to 2.4 is considered to have a low level of corruption. However, in 2013, Transparency International changed its methodology from using cardinal units to percentages.

This methodology was not used in the tables presented in the Appendix because not all countries in the CEE region were included in the 2013 Global Corruption Barometer.

As depicted in Table 1, all CEE countries featured in Transparency International's 2010/2011 Global Corruption Barometer received scores of 2.9 or higher, indicating that these countries have judiciaries that are, at the very least, moderately corrupt.

*[Insert Table 1]*

Nonetheless, it is essential to note that these countries do fall within a spread that is reflective of the rest of the world's standings. Most countries, such as those from North and Latin America, and Africa, have scores ranging from 2.5 to 3.5 (see Table 1). Thus, there is overlap between CEE countries and the rest of the world. It would be misleading to state that the CEE countries are within a league of their own, when in fact their scores are relatively average. This being said, the fact that "average" scores for judicial corruption can be classified as moderately to highly corrupt across the world is concerning. It is important to understand the reasons or causes behind judicial corruption in CEE countries in an effort to understand why this phenomenon has plagued the CEE region since the fall of communism.

Furthermore, the CEE region is unique because, while most countries in this region—particularly EU member countries—are oriented towards the West and are democracies (or transitioning democracies), many CEE countries have levels of judicial corruption that are higher than their Western European counterparts. The divide between Eastern and Western Europe is fascinating, and evaluating causal mechanisms in this region could shed light on why these countries are lagging behind in developing strong, democratic institutions. It could also help explain why some CEE countries are engaging in what scholars are calling "democratic



backsliding”, or the reversion towards an authoritarian regime with a disregard for democratic values and the rule of law.

Interestingly, there is quite a large spread between CEE countries with the highest and lowest judicial corruption score.

***[Insert Table 2]***

The highest score for a CEE country was Ukraine’s 4.4 and the lowest was Hungary’s 2.9. But there are outliers that indicate causes of judicial corruption may be more prominent in certain political and economic environments. Additionally, the CEE region has wide variation on the EU membership variable, thus it is possible that EU membership could have a significant effect on corruption levels.

***[Insert Table 3]***

As seen in Table 3, member countries have an average judicial corruption score of 3.64, while non-member countries have an average value of 3.84. It would be expected that candidate countries have average scores placing them in the middle between member and non-member countries given that they have begun to implement the EU *acquis* and other anti-corruption policies. In order to obtain EU accession they must closely follow EU recommendations or face possible consequences. However, the results of Table 3 indicate that there is no statistically significant difference between candidate and non-EU member countries, as well as between candidate and member countries. This being said, it is important to note that running a quantitative analysis does not tell the whole story, as it is quite possible that the relationship between EU leverage and judicial corruption levels can be influenced by spurious variables, such as public opinion, political will, and possible EU enlargement fatigue.

The CEE region was also selected for its economic diversity. The region has an average GDP/capita of \$10,745.09 and an average judicial corruption score of 3.74 (see Table 4).

*[Insert Table 4]*

Only eight of the eighteen countries featured in Table 2 have GDP/capita levels over the regional average. Half of the CEE countries also have corruption levels higher than the regional average. Literature indicates that countries with lower GDP/capita values have higher levels of judicial corruption and vice versa. There are countries in the CEE region that do not follow this trend. For instance, Hungary and Croatia, although they have roughly the same GDP/Capita values, have drastically different judicial corruption scores. Croatia and Bulgaria have GDP/capita values in the \$13,000's, but have judicial corruption scores of 4.1 and 2.9, respectively. Belarus, an authoritarian regime with a low GDP/capita value of roughly \$8,000, has one of the lowest judicial corruption values in the region, scoring a 3.4 in Transparency International's 2010/2011 Global Corruption Barometer.

CEE countries also implemented different government systems after communism, and this could be an underlying factor that affects the second independent variable studied in this project, judicial independence. There is not a consensus in the literature about which system is most effective in promoting lower corruption levels. The findings from this project could help fill this gap. Additionally, the media in most CEE countries receive rankings of "partly free" from Freedom House, but there are a few countries that have received ratings of "free". Unusually, the countries that earned ratings of "free" are all EU member countries, but there were member countries that failed to obtain the same rating. The inconsistencies in media freedom rankings could prove to have a significant impact on judicial corruption levels that can explain regional variation.

Judicial independence is a component necessary for measuring overall rule of law scores. The CEE region has variation on rule of law scores that proves contradictory. It is believed that countries with high levels of judicial independence will have lower levels of judicial corruption. However, there are numerous countries in the CEE region that have high rule of law scores and high levels of judicial, such as Bulgaria, Croatia, and Lithuania (See Table 2). Finally, political pluralism and participation is also a component that must be considered when measuring judicial corruption. It is assumed that countries with high levels of political pluralism will have low levels of judicial corruption, but countries in the CEE region do not consistently show to follow this trend. Two authoritarian countries, Russia and Belarus, scored values of 3 in this category, but are ranked much lower in judicial corruption scores relative to their CEE counterparts. It is worth noting, though, that CEE countries typically scored much better on this variable, which is interesting because many of these countries still have high to extreme levels of corruption.

The one control variable in this study is the system of law present in each country, as all CEE countries have civil law systems. The three independent variables in this study are EU membership status, media freedom, and judicial independence. After consulting the quantitative data presented in Tables 1 through 4, Romania and Albania were chosen as the two case studies to be featured in this study. First, it is important to note that Albania has a judicial corruption value of 3.8, while Romania scored 4.0 in Transparency International's Global Corruption Barometer. While Romania's judicial corruption level appears to be higher, there is not a significant difference between the two countries, thus it can be concluded that both countries struggle with moderate to high levels of judicial corruption. In simple terms, Romania could be slightly worse-off than Albania, but the difference is marginal relative to comparing Hungary to Bulgaria (see Table 2).

The primary relationship being examined in this study is the effect of EU membership on judicial corruption levels. It is hypothesized that EU candidate and member countries will have lower levels of judicial corruption. Therefore, it was necessary to choose one EU member country and one candidate country. Romania is a EU member and has a GDP/Capita value that is close to the regional average. Albania is a candidate country, but has the third lowest GDP/Capita value of the entire region. Theoretically, countries that are members of the EU are predicted to be richer, and richer countries are expected to have lower levels of judicial corruption. Romania and Albania both deviated from this norm, and this could account for the moderate to high levels of corruption in both countries. Both also vary on the government system variable, as Romania has a semi-presidential system and Albania has a parliamentary system. Literature heavily debates the effect of government system on judicial corruption levels, thus it was essential to choose countries with different systems.

Although both countries have medias ranked as “partly free” by Freedom House, the two countries have a different corruption level, which demonstrates that perhaps there is a spurious variable affecting this relationship that is worth exploring further. Or, perhaps, the relationship between the media, politicians, and the judiciary has affected judicial corruption more severely in one country over another. Romania scored a value of 4.0 and Albania scored a value of 3.8. Additionally, the two countries demonstrated to have rule of law values that contradict many of the theories presented in the literature review. Although Albania has a rule of law score of 9 out of 16, which is a fair score compared to others featured in Table 2, the country still has a relatively high level of judicial corruption. Countries ranked lower than Albania have rule of law and judicial corruption scores that are much better, such as the Czech Republic, Slovenia,

Poland, and Latvia, which is typical of what one would expect to find. Romania, on the other hand, has a better rule of law score than Albania, but has a higher judicial corruption score.

In sum, the two countries were chosen because of their differing values in EU membership status, government system, rule of law, and political pluralism and participation scores. Although the CEE region is diverse in that it has varying scores in almost every category featured in Table 2, most countries fall within certain ranges, making it difficult to select two different countries that vary significantly on all variables. Romania is a wealthier country relative to its CEE counterparts, performs well on rule of law and political pluralism and participation scores, and is a EU member country. Albania represents the portions of the CEE region that are less developed, partly free, and are on the cusp of becoming EU member countries. Interestingly, both countries have relatively similar judicial corruption scores. Romania's score of 4.0 is .2 worse than Albania's 3.8. However, it is essential to note that the only available corruption score available for Romania is from 2007, thus it is entirely possible that the county's score is different today. This being said, the countries are relatively on par with each other in regards to corruption scores and can provide for the best account of variation on the independent variables.

### **Operationalization of Variables**

As with all qualitative studies, coding for variables is a difficult task. At the beginning of each case study chapter, I will provide an overview of each country's TI judicial corruption scores to put the countries' scores in perspective. Both countries have middle to high levels of corruption and presenting data from a quantitative perspective prior to delving into the case studies will aid the reader in understanding progress, or lack thereof, in curbing judicial corruption levels over time. Additionally, the level of judicial corruption can be understood in terms of progress made in implementing judicial reform. Theoretically, as judicial reform is

implemented, there should be tangible evidence of progress in judicial corruption levels. In order to measure judicial reform progress, an assessment of a country's efforts to implement anti-corruption reforms will be made, and the effectiveness of reforms on lowering/increasing corruption levels will also be evaluated. Finally, change in judicial corruption levels over the following periods will be evaluated in the conclusion of this study: 2000-2004, 2004-2008, 2008-2012, and 2012- present.

The first independent variable studied in this project is judicial independence. This is a complex variable and is comprised of many different components. Of interest in this study are the effects of destabilizing political competition between parties and government system on influencing judicial independence, as high levels of judicial autonomy are predicted to result in lower levels of judicial corruption. I define destabilizing political competition as confrontational competition between majority and opposition parties resulting from their lack of solid ideological foundations and tendency towards personality-driven politics. As a result, political alliances between parties are quick to change after political interests are no longer being met. Consequently, the competition between the parties to consolidate power places institutions, such as the judiciary, directly in the middle of the political battles. I will measure this by examining how frequently judicial reforms are derailed for political reasons, as well as actions by the government to place undue burden on the judiciary via court packing or undermining judicial decisions. I will also evaluate the effect of conflict between reformists and anti-reformists in order to discern if competing political interests can negatively impact judicial independence levels.

The effect of government system on judicial independence will be measured by evaluating whether the distribution of powers between the president and prime minister has

created a climate in which the executive has exerted too much power over judicial processes, for example judicial nominations and judicial decisions. Additionally, it will be measured by examining if problems arising from cohabitation—a phenomenon associated with semi-presidential systems—has an effect on judicial independence.

The independent variable of EU candidacy and membership status will be measured by tracking the respective case studies' progress in drawing up and implementing judicial reform packages, as instructed by the EU. A country's responsiveness to EU conditionality and policy suggestions laid out in progress reports will also be tracked over time. In doing so, I will be able to test theories presented in the literature review suggesting that EU conditionality is essential for reforming corruption in member countries. A key component of evaluating if EU membership can truly lower corruption levels is by assessing the overall effectiveness of EU conditionality in persuading countries to enforce its policies.

The last independent variable, the effect of media freedom on curbing judicial corruption levels, is measured by evaluating the dynamic relationship between the press, politicians, and the judiciary. Media pressure can take many forms, but this study is only concerned with the influence of media investigations and investigative journalism in exposing corrupt practices within the judicial branch. This study is also concerned with the influence of politicians or members of the judiciary in attempting to conceal corrupt practices, either by placing pressure on the media to engage in self-censorship, undermining the credibility of journalists, or by taking control of the media market to sway the agenda set by media outlets. It is assumed that if the media has a high level of freedom and autonomy to exercise its role as a watchdog, then more corrupt practices will be exposed and efforts to increase transparency will result in judicial corruption levels lowering over time.

### **Chapter 3: Judicial Corruption in Albania**

Albania, a developing democracy located in the Western Balkans, is among Eastern Europe's most corrupt countries. Since the fall of communism in 1990, Albania has made strides towards rejoining its western counterparts through the slow establishment of democratic institutions. The country has faced significant setbacks in its democratization, including the crippling aftereffects of the 1997 pyramid scheme collapse, numerous flawed parliamentary elections, and its corruption problems in various sectors. The goal of the Albanian government since the early 2000's has been to accede to the European Union (EU). In 2009, Albania submitted its application for EU candidacy, and the European Commission formally granted the country candidate status in 2014.

In Transparency International's 2007 Global Corruption Barometer, Albania received a rating of 3.8 out of 5, indicating that the country's judiciary is on the verge of becoming highly corrupt (Transparency International, 2007). For an overview of TI's classifications please refer to Chapter 2: Methodology. Transparency International changed its methodology from using ratings to percentages for measuring perceived judicial corruption levels in 2013, and Albania has not been featured in many of the organization's Global Corruption Barometers since. However, in 2013, 81% of respondents answered that they perceived the Albanian judiciary to be highly/extremely corrupt (Transparency International, 2013). Given the change in methodology, it is hard to determine if there was a significant difference between the country's score from 2007 and 2013, however, it is still worth noting that both scores classify the Albanian judiciary as moderately to highly corrupt, indicating little change over the years.

Since 2009 Albania has implemented small policy changes to limit judicial corruption, but until recently it was not enough to begin accession talks. In July 2016, with the help of



pressure from the EU and international community, Albania passed a comprehensive reform package that seeks to significantly alter the structure and effectiveness of the judiciary. The purpose of this chapter is to examine common causal variables of judicial corruption to discern the extent to which these variables have positively or negatively affected corruption levels in Albania. The variables under consideration in this chapter are: judicial independence, EU leverage, and media freedom. The technique of process tracing will be used to track these variables over an extended period of time, beginning in 2000 until the present.

### **I. Judicial Independence**

After the fall of the communist regime, Albania established a Parliamentary Republic. Typically, the president in a parliamentary system plays a largely ceremonial role, and is not granted substantial authority or power by the Constitution. To an extent, the Albanian parliamentary system follows this formula, but the president enjoys more autonomy, closer to that of presidents in semi-presidential systems. For the purposes of this study, I will classify Albania's government system as *lean-parliamentary*, as it is not a strict parliamentary system and has characteristics similar to that of a semi-presidential system.

The prime minister serves as the Head of Government and is at the forefront of Albanian policy making and foreign affairs. The prime minister is appointed by the president "on the proposal of the majority party or coalition parties in the Assembly" (CIA, 2017). Formally speaking, the Albanian president is the symbolic figurehead of the Republic and is granted ceremonial powers accrued from holding this title. The president is elected from the ranks of the parliament, as dictated by the Constitution. In 2008 the parliament amended the constitution to change the methods of electing the president. The changes made to the Constitution created a system in which the president "needs a three-fifths majority vote of the Assembly in 1 of 3

rounds or a simple majority in two additional rounds to become president” (CIA, 2017). The constitutional changes were meant to ensure that the president earns a majority of support from Parliament, and in doing so would represent the support of “a majority of the electorate” (Albanian Assembly, 2015, 23).

Below is an overview of the key institutional players in the Albanian Judiciary and the powers granted to each institution, per the 1991 Constitution:

*[Insert Table 5]*

As depicted in the table above, the Albanian Constitution grants the President of the Republic significant authority over the judiciary. In theory, a majority of power should be vested with the prime minister in a parliamentary system, but, until 2016, the president held the majority of the power and influence over judicial appointments, as h/she was one of the sole appointers of judges and chaired the High Council of Justice. In July 2016, the Albanian parliament passed a judicial reform package that significantly curbed the authority of the president over the judiciary, as well as adjusted the structures of various bodies. The 2016 reforms will be discussed in depth in later sections of this chapter, but it is important to note that this chapter will place emphasis on Albania’s poor judicial autonomy prior to the passing of the 2016 reforms, as it is too soon to judge the effectiveness of these reforms today.

The Albanian government has experienced unpredictable shifts in power since the fall of the communist regime, and this has created a de-facto two party system. In theory, Albania does have a multi-party system, but the only parties capable of forming governing coalitions are the Party of Albania (PS) and the Democratic Party of Albania (PD). The formation of a political opposition to the communist party began to form in 1990 after the collapse of communist regimes in Eastern Europe (BBC, 2012). In 1991 the first round of national elections were held

in the post-communist era, and the communist regime won a majority of the seats in parliament (BBC, 2012). However, the communist government was quickly dissolved, and in the same year Prime Minister Nano resigned and a new government formed under Vilson Ahmeti (BBC, 2012). Ahmeti was in power until 1992 when the PD swept the elections under leadership of Albania's first elected president, Sali Berisha (BBC, 2012). The PD enjoyed a majority in parliament from 1992 until 1997 and was in power again from 2005 until 2013 under prime minister and former president, Berisha (BBC, 2012). In a mandate on the government's effectiveness in combating corruption, the electorate voted Berisha and his party out of office in favor of the reformist-oriented PS in 2013. Currently the PS has an absolute majority, and is a member of the large Alliance for a European Albania (ASHE) coalition with the Christian Democratic Party, Party for Justice, Integration and Unity, the Socialist Movement for Integration, and the Union for Human rights Party (CIA, 2017). The government is run by young PS star, Prime Minister Edi Rama, the former mayor of Tirana. The president of the Republic of Albania is Bujar Nishani, a member of the PD. Albania is scheduled to hold national elections in June 2017.

During the period of 2000 to 2004, Albania struggled with securing the autonomy of its judiciary. The country failed to hold free elections after the fall of the communist regime, and with the formation of politically unstable parties, corruption became endemic within the judiciary and efforts to secure judicial independence remained limited. This problem was exacerbated when the PS government won the 2001 elections, as "the country began to slip into a deep political crisis" and "became trapped in internal power struggles, and...lost its political initiative and vision" (Peshkopia, 2014, 121). For example, the ruling PS coalition reportedly nominated judges with connections to organized crime (Peshkopia, 2014, 121). Peshkopia (2014, 121) also notes, "...higher courts, abusing the already-established judicial independence, played

a negative role in the progress of judicial reform by blocking reforms in court administration and career judicial employees, as well as the regulation of the distribution of legal cases.”

Freedom House (2004) reported that in 2003 when the HCJ was tasked with appointing a candidate to the Central Election Committee (CEC), it was subject to intense political influence. At the time, the PS government held a qualifying majority in Parliament and used its position to select a candidate that would cater to its political interests. On June 19, 2003 the government passed a new electoral code, which explicitly called for the CEC to become a “politically balanced” body (Freedom House, 2004). The HCJ appointed Deshira Subashi, a candidate backed by the PS, giving “the party an absolute majority (five out of seven members) in the CEC. To achieve politically balanced CEC, a representative of the Democratic Party (PD) should have been appointed instead” (Freedom House, 2004). Conveniently, the HCJ, a key player in the Albanian judiciary, provided the PS with “an absolute majority in that body just before local elections”, furthering the depiction of the HCJ as a PS pawn (Freedom House, 2004).

There were small improvements made on behalf of the government to promote judicial independence between 2004 and 2008. The PD government was reinstated in November 2005, and passed the Law on Organization and Functions of the HCJ, which “requires judges to resign their judicial posts once they have accepted an HCJ nomination”, thus removing potential conflict of issues for HCJ members who are also judges on other courts (Freedom House, 2006). However, any semblance of reform was short lived, as the Constitutional Court struck down the government’s new law, declaring it unconstitutional the following year (Freedom House, 2007). Freedom House notes that there “were concerns about political interference in the judiciary given that the Parliament’s efforts occurred as the HCJ was about to appoint its member to the CEC” (2007).

One of the clearest examples of political interference with judicial independence occurred in 2007 when the PD attempted to obstruct the mandate of the Office of the Prosecutor General. The intentions of the PD were not ill placed, as Freedom House points out, because the Office of the General Prosecutor was perceived to be an “obstacle in the fight against corruption and organized crime” (2007). However, the way in which the government went about controlling the flow of corruption created by this particular body was flawed. Freedom House criticized the PD government’s decision to remove the prosecutor general and its efforts to “create new ties between the ruling party and the Constitutional Court, the High Council of Justice, and the public procurement ombudsman through new appointments to these institutions” (2008). The organization stated that the government should have attempted to pass a law to curb the judicial corruption, rather than further perpetuating the system of patronage already in place (Freedom House, 2008).

Moreover, during the PD’s reign from 2005 until 2013, there was a breakdown in relations between the party and the opposition that resulted in the derailment of the judiciary’s functionality and efficiency. In 2009, Albania conducted its regular parliamentary elections, in which Berisha and the PD party barely held on to its parliamentary majority (BBC, 2012). As a result, the PS lost a significant number of seats and accused the PD of “vote-rigging”, and protested the results by holding demonstrations in Tirana—Albania’s capital city (BBC, 2012). The PS boycotted parliamentary procedures from September 2009 through February 2010 until an investigation into the results of the election was conducted (Freedom House, 2010). Freedom House states, “even after the boycott, PS participation in the parliament was hampered by the PS deputies’ “conditional relations” which meant they were absent from legislative voting until the election transparency issue was settled” (2010). Since the opposition party was not participating

in legislative voting, this prevented the passing of laws or appointments of state officials, such as the National Judicial Conference law, which was “essential for the appointment of High Council of Justice (HCJ) members” (Freedom House, 2010). If the HCJ did not operate with the correct number of judges, this could have inhibited the body’s ability to carry out its mandate.

The 2009-2010 political crisis is merely one of many examples of politicians tampering with the independence of the judiciary. Since 2008, parliament has rejected 14 presidential nominees to the High Court because of arbitrary political interference by the opposition party (Transparency International, 2016, 66). In 2011, three members of the Constitutional Court concluded their terms but remained in office “because parliament has refused President Bamir Topi’s proposals for new appointees” (Freedom House, 2012). After the parliament refused to accept the nominations, the Constitutional Court reviewed the issue and concluded that the president and parliament have to “agree on selection criteria for appointments to the High Court and Constitutional Court”, which the president precluded, resulting in the parliament blatantly rejecting his nominees (Freedom House, 2012).

In July 2013, shortly after the June 2013 elections in which Berisha and the PD lost their qualifying majority, the HCJ—chaired by the President Nishani, a PD member—presented six judges for consideration to be appointed to various district level courts (Lukmeta, 2013). All of the judges presented to parliament at one point in time had “overseen high-profile trials during their tenure and [were] perceived to have been under the direct influence of the Democratic Party of outgoing Prime Minister Sali Berisha” (Lukmeta, 2013). Lukemeta states that the Albanian public generally believed that the appointments were made in order to “reward” those who helped the PD “emerge unscathed” during the many political crises it endured during its time in power (2013). To make matters worse, the judges were heavily criticized for their clear lack of

qualifications and disrespect for the rule of law. Two of the proposed judges were members of the appeals court that tried 28 defendants implicated in the 2008 ammunition blast that killed 26 people, in which they were assessed as being “too lenient by experts and the public” (Lukmeta, 2013). Another potential candidate fined an Albanian television network 400,000 euros for exposing the misdoings of a minister, clearly undermining the media’s right to investigate corrupt practices (Lukmeta, 2013).

In March 2014 MPs from the PS fought with PD President Nishani over his replacement appointment for high court judge Ardian Dvorani, which was described as a “controversial” decision because the president was only nominating PD judges (Lukmeta, 2014). According to a news report, PS MP’s accused the president of “declaring war on the parliament and on independent institutions”, which resulted in party leaders having to hold a formal meeting to settle the dispute (Lukmeta, 2014). As of early 2016, there were three vacancies on the High Court that had yet to be filled (European Commission, 2016, 58). There currently is no vice chair of the HCJ “due to a conflict of interest between the President and Parliament over the latter’s removal in 2014 of two HCJ members who had been appointed by the previous Parliament; one of them being the former vice chair” (Transparency International, 2016, 66).

A number of corruption cases have also demonstrated a lack of will on behalf of the government to relinquish its hold over the judiciary. In 2011, a corruption scandal involving Deputy Prime Minister Illir Meta of the Socialist Movement for Integration (SMI) rocked the judiciary and parliament. Deputy Prime Minister Meta was charged with bribery, and waived his right to immunity as a MP so that a formal investigation into his accused wrongdoings could take place (Freedom House, 2012). A videotape of Meta bribing an official became public, and was “presented to an international expert to confirm its authenticity” (Freedom House, 2012).

Because Mr. Meta was an MP, the case was within the jurisdiction of the High Court (Freedom House, 2012). Even though there was concrete physical evidence of Mr. Meta engaging in an illegal act, the court “refused to admit the findings of the international expert and instead appointed three Albanian experts to reexamine the recording” (Freedom House, 2012). The Albanian experts claimed that the tape was not authentic and it was removed from evidence, a move that contributed to Mr. Meta’s eventual acquittal (Freedom House, 2012).

In the same year, the former governor of the Central Bank, Ardjan Fullani, was investigated for stealing 700 million lek (Albanian currency) from the bank’s reserve (Bertelsmann Stiftung, 2016, 12). During his tenure, Mr. Fullani and his associates showed to have disproportionately high “allowances compared even to international standards”, and the governor had close ties with many prominent families with connections to powerful politicians (Bertelsmann Stiftung, 2016, 12). At the time, the president’s wife was an employee at the bank and had close ties with the governor (Bertelsmann Stiftung, 2016, 12). Mr. Fullani’s wife was also a judge on the High Court, and after the governor was arrested the High Court allowed for his release from prison under suspicious circumstances (Bertelsmann Stiftung, 2016, 12). Bertelsmann Stiftung states that even though there was an on-going investigation against him, the president invited the governor to his 2015 New Year’s gala, and after this the prosecutor in charge was removed from the case, resulting in the collapse of the case in its entirety (2016, 12).

Since 2009, Albania has passed very few laws to improve its poor judicial independence. As will be discussed in another part of this chapter, the European Commission noted from 2011 to 2013 that little to no progress was made in regards to the government’s efforts to adopt legislation to enhance the autonomy of the judiciary (European Commission, 2011, 11; European Commission, 2013, 9). However, in 2014 the parliament did adopt legislation to “regulate” the



immunity of judges, prosecutors, MPs, and senior officials (European Commission, 2014, 11). In addition, in 2014 the Commission noted that the newly created administrative courts “started to function, but they still need[ed] to be made fully operational” (European Commission, 2014, 11).

It was not until July 2016 when the parliament adopted its first comprehensive reform package. The effect of the EU on the passing of this policy decision will be examined later in this chapter, but the deal has been hailed as the final piece of the puzzle for unlocking formal accession proceedings. The package massively overhauls the judiciary by amending 58 articles of the constitution to enhance judicial performance and limit politicization (Mejdini, 2016A). In particular, the new legislation seeks to insulate the HCJ by removing the president from the body and establishing the new High Judicial Council (HJC) to take on some of the HCJ and president’s roles, such as the evaluation, appointment, promotion, and transfer of judges (European Commission, 2016, 14). The new law also creates a Special Prosecutor’s Office (SPAK) for investigating senior officials, MPS, ministers, and judges (Mejdini, 2016B). Upon passing the legislation, both PS and PD parties were in support of the legislation, and all 140 members of parliament voted in favor of the reform (Mejdini, 2016A).

Parliament also adopted a controversial vetting law in 2016 as part of the reform package, which “calls for the scanning of around 800 judges and prosecutors in Albania in terms of their professional ability, moral integrity and level of independence from organized crime, corruption and public officials” (Mejdini, 2016C). The vetting law was under review until the end of 2016 by the Constitutional Court because the PD stated the law “was biased and created the possibility for ‘witch hunts’ against judges and prosecutors” (Mejdini, 2016C). The Venice Commission and the Union of Judges signed on as “interested parties in the ruling” (Mejdini, 2016C). However, the EU and reformists believe the vetting law to be a crucial part of ensuring

the independence of the judiciary. The temporary pause on the vetting law gave judges ample time to get their affairs in order and to formulate a strong enough argument to either have the law watered down or derailed completely.

Despite progress earlier in the year, in November 2016, the government hit another wall in judicial reform when PD leader, Lulzim Basha, led the PD party out of parliament in the middle of a voting on a law that would create monitoring bodies for judicial appointments (Mejdini, 2016D). Albania will be holding elections in June 2017, and in a press conference Basha stated that Prime Minister Rama was turning Albania into a “narco” state in an effort to undermine the PS government (Mejdini, 2016D). The PD announced that it would be using “radical” opposition “tactics” because “Rama was not to be trusted to take the country into the next elections, so activating major protests against the government was more necessary than ever” (Mejdini, 2016D).

There was a brief sign of hope, however, because in December 2016, the Constitutional Court demonstrated restraint, calling the vetting law constitutional, which allowed for the vetting to begin immediately in January 2017 (Mejdini, 2016E). Experts believe that there will be a mass exodus of judges who will quit before the vetting begins because their corrupt practices will be exposed (Mejdini, 2016F). This could possibly result in a decrease in corruption levels, as most old-guard judges will no longer be able to exert their power. This being said, it is too soon to truly gage the effectiveness of the laws because they have yet to be fully implemented by the government.

### ***Analysis of Judicial Independence***

After tracking Albania’s judicial independence issues from 2000 to the present, it can be determined that poor judicial independence has in fact contributed to high levels of corruption in

the country. The high levels of judicial corruption can be explained for two reasons: the intense, destabilizing political competition between the PS and PD, and the *lean-parliamentary* system established after communism.

As stated in the narrative presented above, the Albanian system is not a true parliamentary system. This is because the president in the Albanian system wields a substantial amount of power over the judiciary, including the ability to nominate judges and hold a seat on the High Council of the Judiciary. It is essential to note, however, that the president's power over the judiciary was diminished and the structure/distribution of powers between judicial bodies was changed in July 2016 with the passing of a massive judicial reform package. The recent changes have brought the Albanian government system more closely in line with what scholars would consider to be a parliamentary system. Due to the fact that this package was passed less than nine months ago, it remains unclear how these changes will affect judicial independence. As a result, for the purposes of this analysis, the effect of government system will be approached from the lean-parliamentary system in place prior to the July 2016 amendments.

The lean-parliamentary system has contributed to a breakdown in relations between the government (led by the prime minister), the president, and the judiciary. The main issue is the president's authority as one of the sole appointers of judges. While there is a check on the president's appointees by parliament, this does not stop the president from appointing political cronies. This was best demonstrated during the events of July 2013, when the PD was on its way out of office. In his wake, President Nishani attempted to pack the court so that political appointees would be left to carry on the political interests of his party the PS regained their qualified majority. Not to mention that the candidates had questionable track records and lacked proper qualifications to be judges on a court of such a high caliber. A similar incident occurred in

2014, and was described as a “war on the parliament and independent institutions” (Lukmeta, 2014).

Another issue is that since the HCJ formulates a list of potential candidates for submission to the parliament, the presence of the president on this body is concerning. According to Albania’s ad-hoc committee on judicial reform, the presence of the president at the head of the HCJ, “who is elected by a clear political and nonconsensual formula”, does not “guarantee the independence and functioning of the High Council of Justice” (Albanian Assembly, 2015, 24). It is therefore possible that the president can place pressure on the HCJ to create a list that is partial towards a certain political agenda, which can lead to undue influence over an important body of the judiciary. The president’s de-facto control over the High Court is also a source of politicization, as the president has the sole authority to appoint members of this court. Given the High Court’s ability to bring about corruption charges against judges, MP’s, the president, and other government figures, the president can place undue pressure on the body, resulting in the court making politically motivated decisions in the event corruption charges are brought against an ally of the president (Albanian Assembly, 2015, 29).

It can be determined that judicial independence has not improved because the current parliamentary system in place is not effective in promoting a judicial culture conducive to eradicating corrupt practices. The fact that political elites have a majority of the control over judicial appointments ensures that judges that are nominated to the courts are just an extension of the current governing party. The powers vested to the president also allow h/she to make judicial appointments based on patronage, not merit, thus ensuring that judges with a disregard for the law are appointed. In doing so, corrupt practices become part of the judicial culture, allowing for corruption to become endemic. The 2011 scandal involving Deputy Prime Minister Meta

demonstrated the grave dangers of political influence impeding the court's mandate. Even though the court had physical evidence that would have convicted him in a corruption-free court, the High Court ruled to acquit Mr. Meta. Freedom House argues that this proved to be a conflict of interest because the High Court judges are "directly exposed to political pressure as they are nominated by the president and elected by a simple majority in parliament" (2012). Furthermore, because Mr. Meta was a member of parliament and the High Court is the only court that handles cases concerning high-level officials, there was a conflict of interest between the court's mandate and the facts of Meta's case (Freedom House, 2012). The outcome of this case would come to have lasting impacts on the judiciary. Freedom House found that after the Meta scandal subsided there were many cases of "refusals of the ruling majority to approve candidacies proposed by the president based on unwritten criteria have intimidated judges...and several candidates have been rejected for seemingly arbitrary reasons" (Freedom House, 2012).

Another trend worth noting is the ambiguity over judicial appointments arising from the lean-parliamentary system in place. There is clearly a struggle between the parliament and president over the authority to appoint judges, as the president is given the authority to appoint all judges but must obtain a simple majority approval from parliament. The problem with this format is that it allows the parliament to blatantly reject presidential appointments out of political spite. Part of this is because of the intense political competition between the PD and PS parties, but it also has to do with the fact that this is a way for the parliament to extend its power over the executive and the judiciary. In a strictly parliamentary system, a majority of the power should be vested with the prime minister, but because the president in the Albanian system has the most authority, it has resulted in a climate in which the only way the Prime Minister can exert its power is by playing a game of political chess with the executive. The actions of the parliament to

block judicial appointments are deliberate, as it is looking to consolidate its power. This is particularly true when the president and governing coalition are from different parties, as presidents will frequently try to pack the court with supporters to insulate them from threats to their power.

While the parliamentary system in place is clearly flawed, I argue that the biggest hindrance to promoting judicial independence—and in effect, low judicial corruption levels—is the destabilizing political competition between the PS and PD. In Albania, political parties are stable in that they are not frequently collapsing or rebranding themselves. However, the issue is that Albanian political parties are not driven by ideology, but rather are personality-driven (Mavrikos-Adamou, 2014, 1162). The author argues that Albania’s post-communist political climate is founded upon “leader oriented” political parties and “divisive party politics” that have caused the “minority party [to be] reduced to opposing immediately and thoroughly any legislation or proposals that are put forth by the majority” (2014, 1162). This climate has also resulted in the failure of the rival parties to engage in “constructive dialogue and compromise” (Mavrikos-Adamou, 2014, 1162). In addition, during the communist regime the justice system “was seen more as an instrument for implementing the decision of the executive rather than an independent authority” (Albanian Assembly. 2015, 8). This legacy appears to have lived on after communism, as there is a blatant disregard by political parties to respect the rule of law and the autonomy of the judiciary, as enshrined in the constitution.

In Albania, courts are merely a pawn of political parties and loyal supporters are rewarded with high-level judicial nominations or are let off the hook for corruption charges. The attempts of former PD president Nishani to appoint PD supporters as rewards for their continued backing during times of political scrutiny is evidence of this. Also, politicians frequently

interfere with judicial decisions, demonstrating that political ties are more important than upholding the rule of law. The biggest issue is the constant vetoing of political appointees by the opposition. Although a majority of candidates presented by the president lack proper qualifications, if the president and governing coalition in parliament are from different parties, the opposition continuously vetoes candidates out of political spite. The failure to fill vacancies on courts ensures that courts cannot fulfill their mandate, which slows down the effectiveness of the courts and leaves them open to politicization. Failure to fill vacancies also allows the current political balance on the court to hold for longer, allowing the political parties to mobilize potential candidates that can help pursue their interests.

Furthermore, the intense political competition between parties has led the opposition to boycott numerous parliamentary sessions during times when crucial judicial reform packages were on the table. The best example occurred in 2016 when the government passed the most recent judicial reform package. The most important law, the vetting law, elicited the greatest amount of outrage amongst the PD and the Union of Judges, who were deeply afraid that their corrupt practices would be exposed. The efforts of the PD to derail the law and discredit the governing party's commitment to ensuring the independence of the judiciary demonstrated that politicians in Albania preference political interests over passing reform efforts meant to secure the independence of the judiciary, which are crucial for lowering corruption levels. This finding can also be extended to judges, who arguably are more concerned with maintaining their ties to politicians for personal gain than upholding the rule of law.

In sum, judicial independence in Albania remained poor from 2000 until present. This is mainly because political elites refuse to reform the judiciary because doing so would force them to relinquish their control over the judiciary. Securing judicial independence is clearly a

secondary priority for most politicians, although the recent reform effort in 2016 may reduce the dependency of the judiciary on politicians. The parliamentary system in place further exacerbates Albania's poor judicial independence and high levels of judicial corruption, as the ambiguous distribution of powers between the prime minister and president leads to the courts being trapped in a battle between the two actors. Therefore, Hypothesis 1 stating that high levels of destabilizing political competition will lead to high levels of judicial corruption is supported. Hypothesis 2 stating that a country with a parliamentary system will have lower levels of judicial corruption was not supported, as the parliamentary system in place has further aggravated the problem.

## **II. European Union Leverage**

After the fall of communism in 1990, it was time for Albania to re-orient itself towards the West. The Albanian government, like most post-communist CEE states, believed that obtaining EU membership status formally solidified a country's transition from a communist stronghold to a full-fledged democracy. Unfortunately, Albania's path to accession has been slower than those of its CEE counterparts. When the Visegrad countries acceded to the Union in 2004, Albania was still in the beginning stages of the accession process. There was a brief moment of hope for Albania in 2007 when Bulgaria and Romania acceded, but once again, it appeared as if the EU believed the Western Balkans needed more time to mature politically and economically. It was not until 2013 when Croatia obtained membership that EU integration had spread to the Western Balkans.

Albania's journey to EU accession began in 2000, when the European Union began the Stabilization and Association Process at the Zagreb Summit (Panagiotou, 2011, 367). The Stabilization and Association Agreement mandated that Western Balkan countries begin reform



processes in the area of justice and home affairs (Panagiotu, 2011, 367). However, EU assistance in promoting minor judicial reforms can be traced back to the early 1990's, when the European Commission allocated money to the Albanian judicial system through the Poland and Hungary Assistance for Restructuring their Economies (PHARE) program (Peshkopia, 2014, 118). The PHARE program was implemented through 1995, and helped the Albanian government re-establish the country's criminal code, and assisted with the training of magistrates (Peshkopia, 2014, 118).

The beginning phases of Albania's accession journey were geared towards meeting the criteria of the Stabilization and Association Agreement. While the Visegrad countries appeared to be moving forward towards democracy in the early 2000's, Albania was still very much lagging behind in establishing democratic institutions. The mid 1990's to early 2000's were characterized by intense political competition between the PS and PD, as they were engaged in a struggle to assert dominance after a post-communism political vacuum was created. In its 2002, Stabilization and Association Report, the European Commission (2002, 4) noted:

Early efforts to introduce democracy and build a market economy were severely undermined by the socio-economic crisis and generalized unrest, which followed the financial collapse of 1997. The lack of a democratic culture, the absence of dialogue between different political tendencies and a limited understanding of the concept of national interest amongst political leaders have often prevented the development and implementation of sound policies to address the many issues that Albania faces. The tense situation in the region has also had an adverse effect on the country's stability.

Additionally, Peshkopia states that in 2001, Albania entered into a "deep political crisis", as the PS-led coalition imploded, which led to "the collusion between the government with organized crime..." (2014, 121). The author writes, "not only did the coalition government lack the political will to further reform the judiciary; it also hampered any effort in this area." (2014, 121-2).

After the publication of the EU's critical 2002 report, there was a slight improvement in the efforts of the parliament to produce judicial reforms. The government passed the Law on the Organization and Functioning of the High Council of Justice, which the EU stated was a "central instrument for the proper operation of the judicial institutions" (European Commission, 2003, 5). The government also amended the Criminal Procedures Code in an effort to deter corruption and organized crime (European Commission, 2003, 5). However, the EU stated that while these were all positive improvements, "full implementation and enforcement" was an absolute necessity moving forward (2003, 12). The Commission re-asserted the power of EU conditionality in triggering reform, stating the "prospect of a Stabilization and Association Agreement" remained a "powerful motor for reform in Albania" (2003, 12).

Albania encountered a setback in 2004, when the government failed to implement the reforms they passed the previous year, unapologetically defying the expectations laid out in the European Commission's 2003 report. The European Commission wrote in its 2004 report, "the Government has continued to state that Albania's progress in the Stabilization and Association Process is a top priority. However, its actions have not always supported this" (2004, 1). The EU noted that the Albanian government failed to implement reforms relating to the "professional capacities of judges, prosecutors, judicial police and administrative staff", as well as judicial infrastructure (2004, 5). The European Commission also shamed the Albanian government by directly tying the public's overall low perception of the judiciary to the government's poor implementation of SAA reforms (2004, 5). In its summary of the report, the European Commission warned Albania that if it wanted to continue EU accession talks, then it needed to "demonstrate political will, the determination and the capacity to address the key issues identified in this report without delay" (2004, 1).

Albania's political crisis continued into 2005, when the country held national elections. The PD swept the PS out of office, and a new government was installed under Prime Minister and former President, Sali Berisha. It was believed that the new PD government would prove to be a metaphorical breath of fresh air compared to the previous government. The PS government was largely ineffective in combating judicial corruption, and frequently reneged on many of its reform efforts to support its own political agenda. Soon after taking office, the European Commission released a comprehensive agenda for the PD government to closely follow.

Peshkopia (2014, 122-3), summarizes the Council of the European Union's agenda:

- (1) Increase the transparency of the criminal and civil justice process;
- (2) guarantee that judges and prosecutors be appointed through competitive examination;
- (3) foster the status, independence and constitutional protection of judges; and
- (4) establish a transparent and merit-based system for the evaluation of prosecutors.

During the same year, the PD government retreated on its commitment to reform and attempted to undermine the judiciary's independence despite previous statements by the EU for the country to respect the rule of law. Peshkopia states that the period of 2005 to 2007 is well known for the PD's "fervent efforts...to depose the prosecutor general and some of the members of the High Council of Justice" (2014, 123). The government claimed that it was removing officials with corrupt ties, but others believed the government was trying to interfere with the autonomy of the judiciary (Peshkopia, 2014, 123). In 2006, the governing PD coalition created a parliamentary committee to investigate General Prosecutor, Theodhori Sollaku's, past performance, while the opposition refused to participate in the committee (Freedom House, 2007). Both the PD and the opposition established their own reports, and the PD's report was selected by Parliament for presentation to the president (Freedom House, 2007). President Moisiu decided not to abide by the parliament's recommendations and instead allowed the General Prosecutor to remain in his position, arguing that "Parliament cannot judge the legality of decisions made by the General

Prosecutor” (Freedom House, 2007). Freedom House commended the president for exercising restraint, concluding, “while the ruling majority’s intransigence demonstrated its problematic relationship with independent power centers, the resilience of the system showed that over the year, Albania has come a great distance toward achieving a consolidated democracy” (Freedom House, 2007).

This being said, there were still moments of trouble in the EU reform process stemming from a lack of political will on behalf of the governing party. Peshkopia points to the “politicized atmosphere” of the Parliament as the main failure for the lack of judicial reform, which “stalled despite the intensive technical assistance” by the European Assistance Mission to the Albanian Justice System (EURALIUS) (2014, 123). During the ongoing dispute over the tenure of the General Prosecutor, the Albanian government was in the midst of passing a reform that would restructure the district courts, but it got sidelined in the midst of the political turmoil (Peshkopia, 2014, 123). The government also drafted a law that would amend appointment criteria for judges, but critics said it failed to address a number of other crucial areas, including the implementation of decisions and training for judges (Peshkopia, 2014, 123). Peshkopia does state, however, that the drafted reforms are “considered an improvement over existing legislation...” (2014, 123).

In 2008, the European Commission stated that the small, incremental changes to the judicial system in 2007 were insufficient (2008, 8). The Commission pressured the Albanian government to “adopt a comprehensive strategy on judicial reform, to complete the legal framework and to provide sufficient human and financial resources for implementation” of the necessary reforms (2008, 9). Going into 2009, the intense political deadlock between the PS and PD continued, casting a dark cloud over any prospect of judicial reform. The European

Commission laid out a comprehensive agenda for the government the year before, and it was expected—as with all recommendations in progress reports—that it be carried out to the fullest extent the following year. At this time, the PD was still in office and had a controlling majority in Parliament. The Albanian government did pass reforms in 2009, but they were not in accordance with EU recommendations from the 2008 Progress Report. The government attempted to pass the Law on Lustration, which targeted judges who had ties to the former communist regime. This law undermined the independence of the judiciary, which is one of the areas the European Commission consistently states as a priority for the government (Peshkopia, 2014, 126). There was a sign of restraint, though, by the Constitutional Court, as it ruled the law unconstitutional; but the damage was already done. Peshkopia writes, the “debate around it affected the judicial proceedings against former minister of defense, and current minister of environment, Matmir Mediu as well as other high officials implicated in the 2008 accident in the ammunition plan in Gerdec...in which 26 people died...” (2014, 126).

In April 2009, the Stabilization and Association Agreement came into effect between Albania and the EU. During the same time, the Albanian government also submitted its application to the European Union so that it could be considered for candidacy status. The European Commission was instructed to draft a formal opinion on the government’s application, to be released in November 2010 (European Commission, 2010, 2). Until then, the Albanian government continued to make few reforms, even after the SAA came into effect (European Commission, 2009, 1). The European Commission noted that the failure to adopt a comprehensive reform strategy was an obstacle to being granted candidacy status (2009, 1). The 2009 report mentioned that the “postponement on procedural grounds of high-level cases, such as the Gerdec trial, raised questions about the impartiality of the judiciary” (European

Commission, 2009, 1). Although brief, the 2009 annual report also called for more legislation to be adopted in strengthening “judicial accountability and transparency of political party funding” (European Commission, 2009, 2).

In November 2010, the European Commission released its long-awaited opinion on Albania’s application for membership. The Albanian government hoped that the European Commission would grant the country candidacy status, but the country was ultimately denied the right to move along to the next “carrot” in the accession process. The European Commission was optimistic about Albania’s potential to reach EU accession criteria in the “medium-term”, but admitted that the country’s inability to implement its judicial reforms was a contributing factor to the Commission’s decision (European Commission, 2010, 10). The other contributing factor was the destabilizing competition between the PS and PD, which is “confrontational and unconstructive” and “obstructs parliamentary work and prevents necessary policy reforms based on consensus” (2010, 5). In the *Conclusions and Recommendation* section of its Opinion, the European Commission stated (2010, 11):

The Commission considers that negotiations for accession to the European Union should be opened with Albania once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and rule of law.

The Commission created a wide-ranging list of policy initiatives the Albanian government needed to tackle in order for the Commission to re-consider candidacy status at a later date. The policy initiatives relevant to the judiciary are the following:

- Ensure the proper functioning of Parliament on the basis of a constructive and sustained political dialogue among all political parties
- Appoint the Ombudsman, and ensure an orderly hearing and voting process in Parliament for constitutional and high court appointments

- Strengthen rule of law through adoption and implementation of a reform strategy for the judiciary, ensuring the independence, efficiency and accountability of judicial institutions.
- Effectively implement the government's anti-corruption strategy and action plan, remove obstacles to investigations, in particular of judges, ministers and Member of Parliaments; develop a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels. (European Commission, 2010, 11)

These areas for reform would come to guide Albania's judicial reform agenda for the coming years.

After the Commission's Opinion was released in 2010, the Albanian government adopted numerous important laws relating to the judiciary. In July 2011, the government adopted the Judicial Intersectoral Strategy and Action Plan, as well as revisited the Law on the Administrative Courts that was abandoned in 2008 (Peshkopia, 2014, 127). The European Union noted progress in reform progress, improving Albania's score from "none" to "limited progress" (European Commission, 2011, 10). This was primarily in part due to the adoption of a Judicial Reform Strategy and Action Plan, which "consulted with a broad group of stakeholders" (European Commission, 2011, 10).

Nevertheless, Albania's progress was short lived, as another political crisis would break out in the same year, halting all judicial reforms. This included many of the agenda items presented by the EU in the 2010 Progress Report. The first problem Albania encountered was that it could not manage to pass any of the laws drafted in 2011. Peshkopia states that in order to adopt the laws mentioned above, the governing coalition needed three-fifths majority, but that was not possible because the PS was being uncooperative (2014, 128). To complicate matters further, the PS led a demonstration against the PD government and four anti-government civilians were killed by security forces, causing a political divide between the governing coalition and the opposition (Peshkopia, 2014, 129). After the demonstration, Albania held local

elections, and the PS lost the mayoral position in Tirana to the PD (Peshkopia, 2014, 129).

Peshkopia writes, “these events deprived the government from both the necessary energy needed for crucial reforms and the necessary consensus of the opposition to adopt legislation that require reinforced majority” (2014, 129).

To make matters worse, the European Union denied Albania candidacy status for the second time in November 2011 (Kola, 2011). The European Commission cited the government’s lack of progress in safeguarding judicial independence, its failure to properly implement the proposed strategy and action plans, and the overall lack of progress in lowering judicial corruption levels (European Commission, 2011, 10-11). The European Commission also noted in its 2011 progress report that the Law on the Administrative Courts was “pending” at the end of the year, which was one of the main policy initiatives that Albania had been trying to adopt for many years (2011, 11). In the EU’s report, titled, “Communication from the Commission to the European Parliament and the Council”, the Commission wrote that Albania had made “little progress” on meeting the policy initiatives outlined in the Commission’s 2010 Opinion (2011B, 15). The European Union laid out additional areas for improvement that were more specific, including reforming the appointment process for High and Constitutional Court judges and limiting immunity for high-level officials (European Commission, 2011, 51, 53).

The Albanian government was forced to go back to the drawing table in 2012, having been rejected candidacy status for the second time. Peshkopia notes, “the second failure of Albania to receive its EU candidate status served as a wake-up call to the Albanian politics, but also to the European Commission” (2014, 179). The author writes that after it became clear to the Union that the political situation in Albania was far from improving, the European Commission sent the Commissioner for Enlargement and European Neighborhood Policy, Stefan



Füle, to Tirana to help mediate a solution to the crippling political crisis (2014, 179). After the negotiations with Füle, there was remarkable progress in the reforms, as both sides agreed to “speed up the adoption of reform-related laws”, including the Judicial Intersectorial Strategy and Action Plan and the Law on the Administrative courts, which were not passed in 2011 because a three-fifths majority could not be reached (Peshkopia, 2014, 179). The Law on the Administrative Courts was a key reform that was mentioned explicitly as an area for improvement in the EU’s 2011 Progress Report.

Overall, Albania showed improvement in 2012 in regards to judicial reform, as the Commission rated the country as making “moderate progress” on this front (2012, 11). Minimal progress was made concerning the appropriation of proper funds and resources to the judiciary this year (European Commission, 2012, 11). Perhaps one of the most important legislative decisions made by parliament this year was the passing of constitutional amendments to limit the immunity of judges and high-level officials—a key request of the Commission dating back to 2009, and, most recently, the 2011 Progress Report (European Commission, 2012, 12). Additionally, when revisions were being made to the 2011 Judicial Intersectorial Strategy and Action plan, the European Commission asked for the Albanian government to revise aspects pertaining to the judiciary (Peshkopia, 2014, 129). In response to the EU’s request, the Ministry of Justice set up working groups to promote collaboration and problem-solving to pass the reform through (Peshkopia, 2014, 129).

After the positive progress Albania made in 2012, the European Commission once again recommended that the European Council grant Albania candidate status. The Commission reiterated in its 2012 report that accession negotiations are directly tied to Albania’s performance in the areas of reform presented in the Commission’s 2010 Opinion (2012, 4). Although the

Commission noted that there had been “moderate progress” in judicial reform, the Council rejected Albania’s request to be considered for candidacy to the European Union (European Commission, 2012, 11). Peshkopia states that one of the main initiatives the EU had wanted Albania adopt in 2012 included the passing of the Law on the Organization of the High Court (2014, 129-30). The author notes that this law was one of three that the European Commission directly tied to the prospect of Albania achieving candidacy status, meaning that if the government could not deliver on this reform, the Council would continue to prevent Albania from moving on to the next accession step (2014, 129-30).

2013 was expected to be a challenging year for Albanian politicians on both sides of the aisle, as the time for parliamentary elections had arrived and both of the parties were mobilizing their forces. The previous year, Parliament elected Bujar Nishani as President of the Republic. Nishani had close ties to the PD and was conveniently elected just as it was becoming apparent that support for the existing PD coalition was waning. Peshkopia states that the PD knew what was at stake in 2013, as it “desperately needed a positive response from the EU to boost its chances for reelection” (2014, 181). The PS seized on its momentum and attempted to undermine the image of the PD party as the party of “reformists”. The PS ran on an anti-corruption campaign and swept the parliamentary elections in June 2013. Edi Rama, the young PS leader and former mayor of Tirana, was elected prime minister.

The election of the PS government marked a change in Albania’s judicial reform and overall progress in curbing judicial corruption. The European Commission noted, “despite a tense and often polarized political climate in the run-up to the general election in the first half of 2013, Albania continued its efforts on reforms in all areas under the key [democracy and rule of law] priorities” (2013, 5). The European Commission stated that it had seen a positive trend in

Albania's judicial reforms, as the government was properly implementing the 2011-2013 judicial reform strategy, a "key priority" listed in the 2010 Opinion (European Commission, 2013, 9). The new PS government also adopted the Law on the High Court in May 2013, which was an improvement, but the Commission stated that comprehensive reforms on both the Constitutional Court and the High Council of Justice still needed to fulfill previous criteria laid out the year before (European Commission, 2013, 37). The significance of passing the Law on the High Court should not be ignored, though, as it helped increase the independence of the judiciary and stream-lined the appointment of judges by the president, two of the Commission's key criteria laid out in previous reports (European Commission, 2013, 37-8). The Commission also highlighted an overall increase in the prosecution and investigation of corruption cases by the judiciary (European Commission, 2013, 40-1).

In an effort to "maintain focus on its EU integration and to monitor reform progress", the European Commission created in November 2013 the High Level Dialogue with Albania (European Commission, 2014, 1). Nonetheless, the European Commission still considered it premature to allow Albania to ascend to EU candidacy status (Rukaj, 2014). Five countries (France, Germany, the UK, Holland, and Denmark) all vetoed the motion to grant Albania candidacy status in 2013 (Rukaj, 2014).

The following year, the government dedicated its resources to fulfilling the agenda set by the European Union. The government's hard work paid off, and finally, after three prior rejections, Albania was awarded candidacy status by the European Parliament in June 2014. The European Commission commended the country on its reform efforts, stating that it had "demonstrated continued political will to prevent and combat corruption" (2014, 12). In its 2014 Progress Report, the European Commission noted that since adoption of some necessary reform

measures had been achieved, the next step was to begin enforcing them (2014, 12). Furthermore, the European Commission stated that the next substantive action the government must take is to adopt and implement a “comprehensive” judicial reform package, as well as continue engaging in constructive political dialogue with the opposition (European Commission, 2014, 1).

The Albanian government responded accordingly in 2015, creating the first ad-hoc parliamentary committee on judicial reform to begin reform discussions and identify areas for improvement (European Commission, 2015, 51). Albania made strides towards decreasing political influence over the High Court, and discussions took place about reforming the body, along with the Constitutional Court, the HCJ, and the Prosecutor’s Office (European Commission, 2015, 52). The actions taken by the government were essential in meeting broad policy initiatives the EU has had in place since 2010, including in the areas of judicial independence and efficiency. Additionally, the number of corruption cases investigation by the judiciary increased by 82% from 2014 to 2015 (European Commission, 2015, 54). The courts also convicted double the number of low to mid-level ranking officials from 2014, but still did not convict many high-level officials on corruption charges, overlooking the Commission’s previous calls for increasing its conviction track records (European Commission, 2014 54). The European Commission stated that Albania’s priority for the next year must be to increase judicial accountability by investigating more corruption cases, as well as to better implement existing reform legislation (European Commission, 2015, 51).

The following year was spent creating a comprehensive reform package capable of propelling Albania into the good graces of the European Commission. Since Albania had reached candidacy status, the next step in Albanian reform efforts was to unlock accession negotiations. Triggering accession negotiations is the last step necessary before being formally welcomed into

the Union as a member country. The Albanian Parliament fiercely debated the proposed reform package in 2016. The PS government was eager to pass the reform, as it wanted to take credit for driving Albania into the next stages of EU accession before the upcoming elections in June 2017. The PD, on the other hand, was not nearly as receptive to the idea of passing the 2016 package, as it wanted to delay reforms to make the PS government look weak and ineffective in the war on corruption.

The beginnings of a political crisis were evident to the European Commission in early 2016. The PS and PD had already begun exchanging barbs, with the PD accusing the PS of going on a “witch-hunt” against the judiciary and the PS accusing the PD of undermining Albania’s efforts to accede to the EU. As the year progressed, the adoption of the comprehensive judicial reform package continued to be delayed, and the EU grew frustrated with the political elites’ inability to overcome their bitter rivalries for the sake of promoting democracy. The PD went as far as to boycott participation in the ad-hoc committee and this resulted in the negotiations becoming “private, informal, extra-parliamentary tables, in a very non-transparent process, in which no details and arguments emerged, but only allegations and threats or, alternatively, a sterile press conference rhetoric” (Mali, 2016).

The European Commission set a number of deadlines for the Albanian government to meet, and by the time July arrived, all of these deadlines had come and gone. Finally, the European Commission exercised its authority over the Albanian government, definitively stating that the EU would give Albania until Thursday, July 21, 2016 to pass the judicial reform package (Gotev, 2016). If this deadline was not met, EU Neighborhood Policy and Enlargement Commissioner, Johannes Hahn, reportedly said it would be the “last possible one” and if there was “no decision, there was the possibility of holding a referendum” on the judicial reform

(Gotev, 2016). Gotev states that at this time roughly 90% of the Albanian population was in favor of passing the reform (2014).

The President of the European Council, Donald Tusk also attempted to appeal to the Albanian government, calling the reform package “very important for Albania and its European future” (“Albania—Tusk: Focus on...”, 2016). Federica Mogherini, the EU’s top diplomat, addressed the Albanian parliament personally, urging them to adopt the reform (Associated Press, 2016). Mogherini directly tied the passing of the reform to the opening of accession talks (Associated Press, 2016). Other external actors, such as the United States, also placed significant pressure on the Albanian government and were essential in pressuring the government to pass the legislation. The US Ambassador to Albania, Donald Lu, reportedly sent text messages to Albanian MP’s, “summoning” them to the US Embassy to “take vision of the consequences the American state would adopt towards them in case of voting against the reform” (Mali, 2016).

The pressure from the EU and international community paid off. On Wednesday, July 20—one day before the EU deadline—the PD and PS reconciled their differences and agreed to rally behind the final draft of the reform package (Semini, 2016). On July 21, 2016 the Albanian government formally approved the amendments to the Constitution. The passing of the reform marks the first time in Albania’s modern history that a comprehensive reform package passed without being watered down or blocked all together.

The 2016 reform package answered many of the Commission’s concerns regarding the politicization and independence (or lack thereof) of the judicial branch. In particular, it completely overhauled the processes for nominations of the High Court and Constitutional Court, as well as re-established the mandate of the HCJ. Under the new reform the High Council of Justice will be replaced by a High Judicial Council (HJC), which will “have greater

independence from political influence and be less prone to corporatism and corruption” (European Commission, 2016, 14). The composition of the new HJC will include 11 full-time members, of which 6 are judges and the other five are lay members (European Commission, 2016, 14). The new reform package significantly curbed the power of the president over the judiciary. The president will no longer head the High Council of Justice (nor the HJC), and a leader will instead be voted on by the members of the HJC (European Commission, 2016, 14). The HJC has taken on the roles of the HCJ, particularly the evaluation, appointment, promotion, and transfer of judges so as to solve the issues attributed to politicization of the body (European Commission, 2016, 14).

The reform package also vastly reforms the appointment process of judges, answering the EU’s requests featured in numerous progress reports. The president will still be involved in the appointment of the justices, but the list of nominees is formulated by the new HJC—without the input of the president (European Commission, 2016, 15). An independent body, the Justice Appointments Council, was created to “verif[y] the fulfillment of legal requirements, as well as the professional and moral criteria applicable to the candidates for the seats in the Constitutional Court and for the new post of High Justice Inspector” (European Commission, 2016, 15-6).

The final piece of the reform seeks to improve Albania’s poor track record of investigating and convicting judges, as it “involve[s] checking the assets and qualifications of all incumbent judges in Albania, as well as those of potential appointees” (Nuttal, 2016). The vetting law is perceived to be the cornerstone of the judicial reform package, and was the primary driving force behind the European Union agreeing to entertain the idea of accession talks (Nuttal, 2016). However, the vetting law did not have the support of the PD, and the Constitutional Court was petitioned by the opposition party to decide on the constitutionality of

the law (Nuttal, 2016). Both the opposition and the Union of Judges believe the law to be an assault on the independence of the judiciary by the PS. The implementation of the law was uncertain until December 2016, when the Constitutional Court finally ruled that the law was constitutional (Mejdini, 2016E). This allowed the process to resume in January 2017, with the creation of a new group, the International Monitoring Operation (IMO), to oversee the vetting of judicial figures (Mejdini, 2016E). The IMO is funded by the EU and US, and began its work on February 8, 2017 (Mejdini, 2017).

Albania is scheduled to hold elections in June 2017, and the PD has begun to rally its troops against the PS. On February 22, the PD boycotted Parliament, which “defied” the EU’s requests that the opposition “not disrupt parliamentary approval of judicial reforms vital to starting EU accession talks” (EurActive, 2017). EurActive (2017) reports that the PD’s actions will inevitably “stall” the work of the IMO, despite the fact that the EU said that if Albania implements the reform and demonstrates ample progress by September then it will trigger accession negotiations by the end of the year.

### ***Analysis of European Union Leverage***

Upon analyzing Albania’s journey from a country in the early stages of democratization to an EU candidate country, two conclusions can be made about the effect of EU conditionality on curbing judicial corruption levels: EU leverage is moderately effective in encouraging reform in the lead up to a country obtaining candidacy status, but is particularly effective in producing results once a country becomes a candidate; and domestic context (such as political climates, ideologies, and public opinion) matters when examining EU leverage in candidate countries. These findings support those of Dimitrova (2010), Garbbe (2014), and Vachudova (2009), amongst others.



This section of Chapter 3 traced Albania's accession process from 2000 until present using the method of process tracing. After undergoing the first two phases of EU accession (signing the SAA and obtaining candidacy status), it can be seen that Albania has come a long way in curbing judicial corruption since the fall of communism. When the EU first began its work in Albania, the country's judiciary was not well developed. Over the years, Albania has slowly but steadily begun to pass judicial reform packages that dramatically transformed its judiciary. Much of this progress can be attributed to the European Union's success in using its leverage over potential member countries to create meaningful and sustainable reform.

Granted, Albania's reform process was not perfect in the early stages of the accession process. Corruption levels remained relatively stagnant in the early 2000's because the PS government was undergoing an internal crisis, which strengthened the ties between politicians, the judiciary, and organized crime. The main tool the EU used in the early stages of talks with the Albanian government was the Stabilization and Association Agreement. This tool was relatively effective in setting a broad agenda for the government to follow in the early 2000's, but did not offer political elites much incentive to begin creating substantive reforms. The SAA agreement encouraged the passing of small reforms such as the Law on the Organization and Functioning of the High Council of Justice. However, the reason why EU conditionality was largely ineffective during this period was because, while the government was eager to adopt reforms to demonstrate effort on many of the agenda items, it lacked the proper incentive to implement the reforms.

The EU carried out its conditionality using its annual progress reports, but in 2004, the EU appeared to make a tactical change. The EU directly attempted to "shame" the Albanian government into beginning to implement reforms. The EU tied the public's poor opinion of the

judiciary directly to the governing coalition, highlighting the inability of the government to follow through on its commitment. This was a clever move on the part of the EU, as it knew that the public was in favor of Albania's swift accession to the EU. The year 2004 was also the first time that the EU directly called upon the government to augment its determination to "address the key issues identified in this report without delay" (European Commission, 2004, 1).

Unfortunately, it can be seen that the period of 2004-2008 did not experience much of an improvement in lowering corruption levels. However, this is mainly in part due to the political crisis that was broke out during this time between the PS and PD. The new PD government attempted to undermine the independence of the judiciary, and this caused many of the important reforms that the government had promised to adopt to be pushed to the sideline. This highlights a crucial part of my argument: domestic context and the interests of political elites are an important factor to consider when examining the overall effectiveness of EU leverage in Albania. Noutcheva and Aydin-Duzgit write that when "the EU incentives are only partially aligned with the incumbents' domestic incentives for rule-of-law change, we witness partial reform that may...or may not be provoked by the EU factor per se" (2012, 72). Furthermore, the authors argue that when the "costs" of passing rule of law reform appear to be "too high for the government incumbents, we see non-reform or patchy reform that amounts to marginal advances in the rule of law" (2012, 62). The "lack of democratic culture" in the early part of accession procedures is also a crucial factor, as "politicians have a limited understanding of the concept of national interest, leading to intense political and personal rivalries within and between the main political parties" (Panagiotou, 2011, 370). Garbbe (2014, 44-5) would concur with Panagiotou writing:

Where the accession process runs against the political tide in a country, it cannot gain momentum to overcome domestic obstacles consistently enough to achieve systemic

transformation. The EU's combination of membership conditionality, material incentives and social pressure depends on widespread orientation towards future membership. Where the accession date seems very far away, rent-seeking elites, weak bureaucracies and nationalist leaders can stop EU-motivated reforms even if the public wants to join.

However, during this time the government did pass some reforms that were described as “improvements over existing legislation” (Peshkopia, 2014, 123), which demonstrates that in the early phases of EU accession, EU conditionality is effective, but its power can be easily masked by the actions of power-hungry political elites seeking to advance their own interests over those of the state-building.

European Union conditionality and its effects on corruption levels improved after the Stabilization and Association Agreement EU came into effect in April 2009. I argue that this is because the implementation of the SAA convinced the Albanian government to re-evaluate its course of action, as it became increasingly clear that the next “carrot” in the accession process would be to obtain candidacy status. Anastasakis argues that EU conditionally “makes clear” and “explicit” to potential member countries because “it would lead to the successful conclusion of the accession negotiations for membership into the European Union” (2008, 368). Obtaining candidacy status is one of two monumental steps a potential-EU member country can take in its accession journey, and provides political elites both with bragging rights and a plethora of political and economic benefits. After the EU rejected the country's bid for candidacy status in 2010, the government sped up its judicial reform efforts. The rejection by the European Parliament—on three occasions—served as the primary motivator for the Albanian government, particularly since the country was undergoing the process with the rest of the Western Balkans, creating a sort of competition.

The policies the European Parliament laid out in the 2010 Opinion would come to shape Albania's judicial reform progress until 2014. The EU used these agenda items as the minimal

baseline that Albania must meet in order to obtain candidacy status. By setting clear parameters early on in the accession process, the EU's agenda setting provided the government with a working blueprint to follow. Vachudova states, "in order to be effective, EU leverage must be applied well before accession. Indeed, experience suggests that once negotiations for membership have gained momentum, it is already too late to apply strong conditionality and/or turn back..." (2009, 60). This finding appears to be applicable to the Albanian case, as in the year following its first rejection for candidacy status, the government adopted essential reforms that were praised by the EU. The EU's progress report took note of this improvement, and improved Albania's score from "none" to "limited progress" in the area of judicial reform (2011, 10).

After Albania's second rejection of candidacy status in 2011, the European Union increased its leverage over the country to include the prescription of very specific policy reforms that the government needed to adopt in order to meet the criteria laid out in the 2010 Opinion. This leads me to my next argument: the role of the European Union as an agenda setter for the Albanian government has proven to be particularly effective in curbing judicial corruption. While implementation on many of the reforms continued to lag behind, without the European Union to continuously guide the government's policy initiatives, it is more than likely that Albania would still be suffering from crippling corruption levels.

The main problem the government faced from 2000-2010 was a lack of initiative and sense of urgency to adopt reforms. The European Union was able to provide the government with a "push forward" and its effect cannot be denied. After the Albanian government was rejected candidacy status in 2011 and a destabilizing political crisis broke out between the PS and PD, the EU adopted a new role: mediator. After the Union sent Commissioner Fule to Tirana

to mitigate the conflict between the parties, the parties reconciled and even began passing the specific reforms laid out in the 2011 progress report. At this point, the Albanian government recognized that it needed to comply with the EU's requests otherwise it would face a humiliating third rejection for candidacy status the next year. Peshkopia writes that this is consistent with theories on the effect of EU conditionality, stating that "membership conditionality only works when it manages to shift domestic leaders' policy preferences to compliance...if the benefits of membership are higher than the domestic cost of sectorial reform, then governments proceed with that reform" (2014, 214). The Albanian government continued to be responsive to the requests of the EU not only in terms of adopting policy, but also in engaging in problem solving initiatives with the opposition to mitigate political disputes.

However, it should be noted that an underlying force driving the progress in judicial reform from 2012-2014 was the upcoming elections in 2013. The PS party was very much aware of the fact that any efforts to derail judicial reforms would fare horribly for their chances of removing the PD government from power the following year. Similarly, the PD understood that in order to get re-elected the following year, it needed to continue to produce meaningful reforms. As stated previously, a majority of Albanians viewed the possible accession to the EU in a favorable light. As such, this came to influence the policy decisions that political elites took, as blocking suggested EU reforms would reflect poorly on them. Bogdani and Loughlin (2007, 190) note that the "aspirations of the Albanian people to reintegrate into mainstream Europe and the 'bottom up' pressure that results may be used to promote reforms." This explanation, coupled with EU leverage, can aid in explaining why EU conditionality was most effective in 2013, as the potential of obtaining candidacy status became a reality. It appeared that Albania's third and final rejection in 2013 was the ultimate push the new PS government needed, as the following

year it finally obtained candidacy status. Thus, as a country grows closer to obtaining EU candidacy status, EU conditionality becomes the primary driver in the propelling forward reform efforts.

The most important finding to come out of the narrative presented above is that once a country obtains candidacy status, EU conditionality is particularly effective in lowering judicial corruption levels. This finding is in accordance with the findings of other scholars who study the effects of EU conditionality on reform efforts. Indeed, Dimitrova argues that EU conditionality was particularly successful in “stimulating” CEE states to adopt and implement reforms as they are gearing up for accession, and this progress continues to improve once a country becomes a candidate country (2010, 137-8). This was best seen from 2014 to the present, when Albania was in the midst of passing its first comprehensive judicial reform. Over the years, the EU consistently requested that the Albanian government pass a comprehensive reform. Once the country achieved candidacy status, it began to undergo the adaptation of the massive reform package. However, political elites attempted to thwart the adoption of the law, as parliamentary elections were coming up the following year and the PD was itching to regain its majority in June 2017. The EU refused to let Albania renege on its commitments, as it had made progress in its judicial reform since 2000. The year 2016 was the first time that the EU began to use threats of halting accession negotiations with the government unless it met a deadline. The reform package was also the first time the EU had to dictate to the government a deadline to be met. This reinforced the idea to the government that failure to pass this reform package would derail any hopes of meeting the 2020 accession target laid out years before. After pressure from multiple members of the EU, including the President of the European Parliament, the EU Commissioner, and the High Representative of the European Union for Foreign Affairs and

Security Policy, the PD agreed to work with the PS. The next day, Albania passed a monumental reform package that is expected to overhaul the judiciary and dramatically improve corruption levels. The role of the US in pushing forward the reforms should also not be denied. The US played an essential role in working with the EU to put pressure on the government. The dynamic between the US and the EU and its commitment to leveraging its influence over the Albanian government demonstrates the effectiveness of powerful external actors on prompting judicial reform. The passing of the reform also “unlocked” the goal Albania had been reaching towards since 1989: the opening of EU accession negotiations.

Of course, the Albanian government is not perfect and experienced minor setbacks after the reform package was passed. However, the reformists in the government proved victorious after the PD and the Union of Judges challenged the controversial vetting law. The Constitutional Court showed exceptional restraint when it ruled the law constitutional. The Court willingly subjected itself to vetting procedures upon releasing its decision, as it paved the way for the vetting procedures to begin as early as January 1989. The vetting law allows the EU to create a committee to oversee the vetting of 800 judges, including those on the Constitutional Court.

Worth noting is the influence of EU “enlargement fatigue” on Albania’s overall accession journey. Throughout Albania’s journey to candidacy status many countries remained skeptical about the integration of the Western Balkans, as they believed Albania and its neighbors posed significant threats to the political and economic stability of the Union. The concern was particularly relevant given that the region was still recovering from the aftereffects of the global financial crisis triggered in 2008 (Zeneli, 2016). The Union was also facing an overall assault by critics about the future of “Europeanization”. These issues, combined with the promotion of

Jean-Claude Juncker to European Commission President in 2014, have “sidelined” the integration of the Western Balkans into the EU (Kmezic, 2015, 11). Kmezic states, “many EU Member States seemingly pay lip service to enlargement, while making use of their veto powers to delay the accession process” (2015, 11). This was best demonstrated in 2013 when five countries vetoed Albania’s third attempt at reaching candidacy status even though substantial reform progress had been met by the new PS government. It is unclear, though, how much of a role enlargement fatigue influenced the overall effectiveness of EU conditionality in curbing corruption levels. Zeneli argues that “overall support has not been fizzling out at all”, pointing to the efforts of German Chancellor, Angela Merkel, to reassure the Western Balkans in 2014 (2016). However, Zeneli also warns that the EU’s actions, including “sending de-stimulating messages to the region for further enlargement would create the unintended consequence of ‘reforms fatigue’” (2016). The author concludes that this could “foster political back-sliding and instability for the region and the EU itself” (Zeneli, 2016).

In sum, EU conditionality is effective in lowering judicial corruption levels. This finding supports Hypothesis 3, which postulates that EU candidate countries and member countries have lower levels of judicial corruption. Albania’s judicial corruption levels have diminished significantly since 2000, and this has been mainly in part due to the role of EU conditionality in putting the proper pressure on the government. EU conditionality provided political elites both with initiative and a sense of urgency. Two arguments have been made in this section: EU leverage is moderately effective in lowering corruption levels in the lead up to a country obtaining candidacy, but is particularly effective in lowering corruption levels once a country achieves candidate status (relative to the progress made when a country is still a potential candidate country); and domestic factors—such as the interests of political elites, veto players,



and public opinion—matter significantly and can either help or hinder the efforts of the EU in lowering corruption levels. Given the current state of Albania’s judicial reform, it will be interesting to see how the partnership between the EU and the Albanian government plays out in the coming months, as it could be crucial in deciding the June 2017 parliamentary election results and whether Albania meets its target date of accession by 2020.

### **III. Media Freedom**

Since 2002, the Freedom House Index has consistently rated Albania’s media as “partly free” in its *Freedom of the Press* report. Theoretically, the Albanian media is protected by the constitution, and the Albanian public is protected from defamation, as it is a criminal offense that carries the punishment of fines (Freedom House, 2015). In order to protect journalists from being subject to false claims of libel violations, an effort was made in 2012 to lessen the punishment for libel to remove prison sentences and lower hefty fines—which often were misplaced on journalists by elites (Freedom House, 2013). While it appears that the media is well protected under the law, Albania continues to receive only ratings of “partly free” because of the intense politicization of the media by political elites and wealthy business owners (Freedom House, 2015).

Press freedom has only begun to slowly improve since 2000. In 2002, Freedom House reported that Albania still considered libel and defamation to be criminal offenses (2002). The quality of news at the time was described as “sensationalist and irresponsible”, and journalists lacked integrity (Freedom House, 2002). Additionally, the physical security of journalists was never guaranteed, as there were frequent attacks against journalists for publishing their opinions or the facts in stories (Freedom House, 2003). The government also had a tight hold over the media in the early 2000s. In May 2004, Prime Minister Fatos Nano sued the publisher of *Koha*

*Jone*, Nikolle Lesi, for libel when his newspaper pointed to Nano as a key player in corruption (Freedom House, 2005). Later that year the courts found him and another publisher guilty of libel and defamation, respectively (Freedom House, 2005).

In recent years there are still a number of highly concerning issues pertaining to press freedom that have resulted in a stagnation of media freedom values. Freedom House reported in 2011 that the “high number of broadcast and print outlets competing in the small Albanian media market has led to an environment guided primarily by business interests.” The organization states that this is because “editorial independence and quality is hampered by media owners who also run other business, and state pressure on media is most often seen in interference in these other economic interests” (Freedom House, 2011). Over the years there has been an increase in the number of media outlets in Albania. As of 2015, Albania has the highest number of newspaper outlets in all of Europe, but also has one of the lowest circulation and distribution rates (Freedom House, 2015B).

The relationship between the government, media, and judiciary also remains poor. Albania has a history of the court system fining the media for committing “offenses” during corruption investigations. Freedom House highlights one instance occurring in 2010 when a court fined the TOP TV channel for “violating the privacy of former minister of culture Ylli Pango” (2012). The network was fined 400,000 euros, which was viewed to be at the time “disproportionate to the offense and a threat to the investigative journalism in the country” (Freedom House, 2012).

Generally speaking, today the media does not break many stories on judicial corruption. In a report released by the Balkan Investigative Reporting Network (BIRN) in 2014, it was revealed that only 304 articles were published on the topic of corruption (BIRN, 2014, 22). Of

those 304 articles, corruption stories relating to the justice system only made up 9% of newspaper coverage (BIRN, 2014, 22). BIRN also conducted the same type of study for three TV networks. Similarly, the organization found that out of 290 news pieces analyzed, 152 were focused on politicians and the administration, while only 20 news articles (7%) covered judicial corruption (BIRN, 2014, 23). The report found that most of the time, media outlets focus on “pseudo-events drawn from political press releases or news conferences of public institutions (such as ministries, the General Prosecutor’s Office, State Police) which were identified as well as the main organizers of news events reported in the media on corruption cases” (BIRN, 2014, 38).

The Albanian media is also heavily reliant on advertisement funding from political parties and this has compromised the independence of the media. Freedom House reported in 2013, “media depend on coveted advertising contracts from state institutions, which are typically awarded to media that provide favorable coverage to the government, leaving few truly independent outlets” (2013B). The government also uses its influence over advertising funds to control the media and run pro-government stories (BIRN, 2015, 17-18).

As a result, the media has not shown to have a high track-record in breaking corruption stories at the higher levels of government, and there have been very few efforts dedicated to the investigation of mid to low level government officials (Transparency International, 2016, 197). In 2015, BIRN conducted interviews with several media groups, and concluded that self-censorship has become the norm in Albania due to a lack of independence deriving from constant pressure by politicians or questionable financial dependencies on state institutions (23-4). The report also highlighted that self-censorship is a continuous problem in the Albanian media because journalists are “fearful of what could happen if they publish certain information”

(BIRN, 2015, 8). The relationship between the media, courts, and politicians also remains poor because of this dependency. Overall, Transparency International states that “investigative journalism has grown but remains generally weak and hampered by the lack of independent media and judiciary, and low resource levels” (2016, 197).

### ***Analysis of Media Freedom***

The narrative presented above provides a very limited picture of the overall relationship between the media, judiciary, and politicians. It is difficult to properly discern the effect of media freedom on judicial corruption levels in Albania, mainly because self-censorship and a lack of investigative journalism have contributed to a culture in which reporting on judicial corruption is non-existent. The role of the media in society should be to act as a watchdog on government institutions, such as the judiciary. However, in Albania the media is less of a watchdog and more of a silent observer. According to BIRN this has hindered the public’s access to information, thus ensuring that judicial scandals are rarely ever exposed (2015, 8). BIRN also states that in order for the media to be effective in the “fight against corruption” it must engage in investigative journalism that “produce[s] tangible and intangible results against corrupt practices” (2014, 7).

Part of the reason that Albania continues to struggle with judicial corruption is because, while the media is in fact rated as “partly free” and the government has not placed legal restrictions on journalists, a majority of the investigative reporting focuses solely on politics. BIRN writes that this “leaves little space for news from other sectors of society or government affected by corruption”, including the judiciary (2014, 39). There is a “tabloidization of corruption cases” which is meant to “divert public attention away from the abuse of power or impunity related to such cases” (BIRN, 2014, 41). Therefore, if judicial corruption is discussed in the media, it does not get the attention it deserves. The media is meant to investigate corrupt

practices in order to increase transparency. If transparency cannot be obtained, then corrupt practices will continue to go unnoticed, allowing corruption in the judiciary to become endemic.

Additionally, the relationship between politicians and the media remains strained, as politicians use the courts as their pawn to sue journalists who shed light on their corrupt practices. As a result, this has contributed to a culture in which journalists must self-censor or else face monetary or legal consequences for publishing incriminating stories. This was best seen in 2004 when Prime Minister Nino sued an editor of a prominent newspaper for libel, and another for defamation. The courts act as the middleman between politicians and the media by handing out decisions that are neither fair nor just. Courts should act as a check on MP's who wish to use their power for political gain, but due to the lack of judicial independence in Albania, this is a tricky feat.

These findings support Hypothesis 4, which states that countries with low levels of press freedom will have higher levels of corruption. In Albania, the media is only ranked as "partly free", which is not a horrible rating, but has contributed to the country's high levels of judicial corruption levels. The media has the ability to investigate judicial corruption if it so chooses, but the reliance on the state for funding and advertisement as contributed to a culture where self-censorship is acceptable. Thus, overall, it does appear the Albania's media freedom score has had an affect on its judicial corruption scores.

## **Chapter 4: Judicial Corruption in Romania**

In 2007, Romania acceded to the European Union (EU), effectively putting an end to any doubts about the country's ability to join Europe's most prestigious political-economic bloc. Romania's journey to EU membership was rocky. After failing to join the Union with its fellow post-communist neighbors in 2004, Romania faced the daunting possibility of delayed accession talks unless the country got a handle on its significant corruption issues. The European Union used conditionality to encourage Romania to combat corruption. Through the use of the safeguard clause and biannual Co-Operation and Verification Mechanism (CVM) reports, the European Union used its leverage over the Romanian government to push through reforms leading up to accession. However, as will be elaborated on further in this chapter, the effects of EU leverage on Romania's corruption levels remain limited post-accession.

The European Union has listed judicial corruption as the most important policy area needing to be addressed post-accession by the Romanian government. In 2013, Romania earned a value of 3.7 (out of 5) on Transparency International's Global Corruption Barometer (TI, 2013). Romania's score indicates that the judiciary is moderately corrupt and that the public has moderately low trust in the judiciary. In TI's 2010/2011 Global Corruption Barometer, Romania scored 4.0 (TI, 2010). In 2006—the year preceding Romania's accession to the European Union—the country earned a 3.9 (TI, 2006). In the same 2010/2011 report, Romania's Eastern European neighbors, Poland and Hungary, scored 3.3 and 2.9, respectively (Transparency International, 2011).

As one can see, Romania's scores have remained in the middle to high range since acceding to the EU in 2007, but have improved since the fall of communism. These values also put Romania's corruption values in perspective relative to other CEE states. Romania struggles

in comparison to its counterparts, encouraging one to assume that there is indeed a unique variation on the three main variables under consideration (EU membership, judicial independence, and media freedom) that could be contributing to its poor scores. This chapter seeks to examine the effect of three independent variables on Romania's judicial corruption levels in an effort to trace causal relationships over time.

## **I. Judicial Independence**

After the fall of Nicolae Ceausescu's regime in December 1989, Romanian politics have been unpredictable and, often, volatile. After Ceausescu, the socialist party renamed itself and, for the most part, continued to dominate Romanian politics until 2004 (Vachudova, 2009, 57). Post-communist Romania is characterized as a multiparty system in which many parties have stakes in government. Since 1989 the left-leaning Social Democratic Party (PSD)—formally the PDSR—, the center-right Liberal Democratic Party (PDL), the right-leaning National Liberal Party (PNL), and the Democratic Union of Hungarians in Romania, the party representing Romania's Hungarian minority group, have dominated politics (Balkan Insight, 2010). The PSD and the PDL are, arguably, the leading political parties in Romania and have been members of various governing coalitions throughout the 21<sup>st</sup> century.

Romania's government is a semi-presidential system in which the president is the formal head of state and the prime minister the head of government. The president is elected by popular vote and must earn an absolute majority in a run-off if one cannot be achieved in the first round (CIA, 2017). The president, with the approval of the bicameral Parliament, selects the prime minister.

Romania has struggled to secure the independence of its judiciary since the early 2000's, when the country was in serious talks with the European Union. In 2004, Romania was rocked

with a scandal Freedom House has dubbed Romania's "Watergate" (Freedom House, 2005). In November 2004, Romania was scheduled to hold presidential and legislative elections. The party in power at the time was the Social Democratic Party (PSD). The former communist party enjoyed a majority in parliament and former-PSD Prime Minister, Adrian Nastase, was looking to extend the party's political control in the upcoming presidential election. His opponent was Traian Basescu of the opposition PDL.

Roughly one week before the first round of presidential voting, the media leaked pages of PSD meeting transcripts (Ionita, 2004, 119). In these transcripts, the PSD government openly discussed its efforts to interfere with the mandate of the courts. According to Ionita, the transcripts confirmed that "PSD leaders were scheming how to manipulate judicial investigations and influence the decisions of courts; how to block the activity of the nominally independent agencies, such as the Court of Accounts, in order to cover the actions of ministers..." (2004, 119).

One particular transcript covered a meeting of three high-level PSD leaders on October 20<sup>th</sup>, 2003. Present were Nicolae Vacaroi (Chair of the Senate), Florin Georgescu (Deputy Governor of the Central Bank), and Rodica Stanoiu (Minister of Justice). Prime Minister Nastase was also in attendance but was not featured speaking in this particular set of transcripts. In the leaked transcripts, Mr. Vacaroiu expressed to Nastase his concern about the party's poor image. He stated, "All our investigating institutions only expose PSD members", and admitted to the Minister of Control, Blanculescu, that he could "expose one of ours in a press conference if [he has] five from PRM, four from PD and two from PNL alongside him" ("Corruption, Political Control...", 2004, 121).<sup>1</sup> Mr. Vacaroiu's attempts to sabotage the opposition parties went a step

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<sup>1</sup> See "Corruption, Political Control of Judiciary, Traffic of Influence" for full transcripts



further, as he suggested that the PSD undermine the court's ability to try cases by "produc[ing] three-four more investigation files, to hit them [PD and PNL] in the head..." ("Corruption, Political Control..." 2004, 121).

Perhaps the most incriminating parts of the leaked transcripts were the statements made by Mr. Georgescu, a top PSD leader and former Deputy Governor of the Central Bank. He suggested to Nastase that the PSD come up with " a number of concrete cases [against the opposition, to counterbalance the resignation of 3 ministers in 2003...], because these are institutions we control." ("Corruption, Political Control..." 2004, 121). Additionally, Mr. Georgescu pressed Nastase to speak with the head of the Court of Accounts, Mr. Saguna, "on the behalf of the party" so that the Court did not begin investigations into numerous PSD ministers and their mishandlings of public funds ("Corruption, Political Control..." 2004, 121). Georgescu warned Prime Minister Nastase that the corruption case files would soon be taken from the Court of Accounts to the "ordinary courts" where the PSD does not have "people at the top" ("Corruption, Political Control..." 2004, 121).

Below is an excerpt of a transcript in which Mr. Georgescu directly hints that the head of the Court of Accounts should collude with the PSD:

I am not complaining here, don't get me wrong, this is just a friendly recommendation, he [the head of the Court of Accounts, n.t.] should be more constructive, he should come and talk to us more often. And he should look more often into the budget executions from the past, when he looks at 2002 he should say fine, is Ok, but oops, here is a problem from 1999 [from the previous center-right administration, n.t.], the law allows him to investigate 1999. Thank you. (Statement made by Florin Georgescu, obtained from "Corruption, Political Control...", 2004, 122).

Former Minister of Justice for the PSD government, Rodica Stanoiu, admitted to screening cases against PSD members to prevent them from being prosecuted. In the transcripts, she stated, "there are two-three other files on the pipeline, they are coming, and they are hard and important.

I have been told that in almost all of them we find people from here involved... so I left them in stand by to see how we work them out..." ("Corruption, Political Control...", 2004, 122).

Many high-level PSD members, including the president of Romania, Ion Iliescu, confirmed the authenticity of the transcripts (Ionita, 2004, 119). Prime Minister Nastase, although not featured on the tapes, claimed that the leaked transcripts were fakes, but Deputy Prime Minister Adrian Severin admitted to their authenticity (Parvulescu, Demsorean, and Vetrici-Soimu, 2005, 10). The PSD's power and control over the judiciary was evident when Romania's anti corruption agencies failed to properly look into the matter. Ionita notes, "both the Prosecutor General and the Head of the National Anti-Corruption Prosecutor Office (PNA, special institution created in 2002 with EU assistance) disappeared from public view for a few weeks when this scandal broke out" (2004, 220). The Prosecutor General also said he would not investigate the corrupt acts until the national elections were concluded (Ionita, 2004, 220).

After the national elections in November 2004, the PSD was thrown out of office and a new government favoring anti-corruption reform was installed under Prime Minister Calin Popescu Tariceanu (Bilefsky, 2005). Former PSD Prime Minister Nastase and Traian Basescu, were the front-runners in the presidential elections. Basescu was a member of the D.A. "Justice and Truth" Alliance between the PNL and the PD (Hipper, 2015, 159). During the first round of voting Nastase failed to earn a majority in the first round of voting, as required by law, so a runoff was conducted. Basescu was not favored to win, but miraculously beat Nastase in the runoff vote, earning 51.2 percent of the vote to Nastase's 48.77 percent (Hipper, 2015, 159). The socialists' monopoly over Romanian politics had come to a surprising halt.

The 2004 presidential elections were a significant turning point in Romania's history not only because they brought about the end of the socialists' political dynasty, but also because the

elections changed the momentum of Romania's judicial reform efforts. The newly elected government ran on an anti-corruption campaign, and had an ambitious agenda. The new president's center-right Justice and Truth Alliance did not earn a majority in parliament, and had to form a coalition with the UDMR in order to gain a majority over the PSD's National Union (Hipper, 2015, 159).

Monica Macovei was nominated as the new Minister of Justice. Hipper states, "the main internal political challenge for the new veto players involved implementing judicial reforms despite internal resistance from the judiciary" (2015, 160). Basescu's appointment of Macovei and other ministers eager to reform the judiciary did not bode well with the opposition government, as "Basescu's opponents charged that their investigations were politically motivated, targeting politicians from opposing political parties" (Vachudova, 2009, 58). Minister of Justice Macovei was the primary target of the PSD's attacks, as she posed the greatest threat to the political parties, who were concerned the new minister's agenda would harm their close ties with the judiciary.

Hipper writes that the Romanian judiciary in 2004 was "built upon conservative, opaque institutional and personal structures and was reluctant to change" (2015, 160). Macovei's main policy initiatives included: increasing judicial independence from "political mechanisms" and removing "the institutional and personal influence of the old nomenklatura on judicial workings" (Hipper, 2015, 160). Macovei passed a three-law package on judicial reform in July 2005. The three laws included: the Law on the Superior Council of the Magistracy, the Law on judicial organization, and the Law on the Status of the Magistrates (Hipper, 2015, 162-3). The package was crucial in increasing judicial autonomy, as it "envisaged the transfer of powers from the Ministry of Justice to the Superior Council of the Magistracy...[and] ensured the protection of

the judiciary from political pressure” (Hipper, 2015, 166). In particular, the Ministry of Justice lost its power to appoint judges, vote in the Superior Council of the Magistracy, and other powers pertaining to the suspension of judges (Hipper, 2015, 166). The laws sought to change the process in which members of the Superior Council of the Magistracy were elected.

Previously they were chosen by Parliament, but under Macovei’s reforms the members were required to pass competitive exams in order to move forward with the selection process (Hipper, 2015, 169).

While these reforms seemed like a positive step forward in Romania’s journey towards judicial corruption reform, the intensely politicized nature of Romania’s government threatened to derail efforts to de-politicize the judiciary. When the Ministry of Justice attempted to enact the 2005 Action Plan’s reforms, there was significant backlash from the opposition and the Superior Council of the Magistracy because the groups felt it was necessary to dilute the reform packages (Hipper, 2015, 173).

Hipper argues that the pushback from the Superior Council of the Magistracy was unnecessary, as the proposed reforms had already been publicly debated, were on the Ministry of Justice’s website, and were presented to the SCM well in advance (2015, 173). The SCM is a “representative body for the top management of the judiciary” and its powers include recruiting, promoting, and managing Romania’s judges (Freedom House, 2006). The members of the SCM at the time were elected under the Nastase and PSD-led government, and thus the body was packed with trusted PSD insiders. As a result, the SCM was “reluctant to contribute to its own reforming process” since the PSD was the primary opposition party attempting to derail the reform efforts (Hipper, 2015, 173). The reforms eventually passed, but were watered down significantly to reduce the Ministry of Justice’s control over the judicial branch.

To complicate matters further, the political climate in Romania from 2004 to 2012 was marred with strife and was not conducive to securing the independence of the judiciary. The PDL-PNL coalition began to unravel as a feud between Prime Minister Tariceanu (PNL) and President Basescu (PDL) erupted in 2007. Prime Minister Tariceanu challenged Basescu's power and swayed opposition parties, the PSD and UDMR, to form a counter coalition with Tariceanu's party (the PNL) (Hipper, 2015, 193). The prime minister and his new coalition began impeachment charges against Basescu, accusing him of infringing upon the rule of law. Tariceanu's government went to great lengths to impeach Basescu and entered into a legal battle with the courts. Under the Romanian constitution, President Basescu had the opportunity to call a referendum to allow the population to decide if the parliament can continue with impeachment procedures (Freedom House, 2008). Parliament passed a law stating a "president can be dismissed with a majority of voters present if he was elected in the second round, but if he was elected from the first round with an absolute majority, then a majority from the absolute number of votes is required for dismissal" (Freedom House, 2008). Tariceanu and his coalition changed the law to prevent the president from calling for a referendum for "constitutional matters", which would include impeachment (Freedom House, 2008).

There was intense political debate over the legality of the changes to the law, and Romania's Constitutional Court was asked to rule on the constitutionality of the changes. Freedom House notes that the Constitutional Court was "overwhelmed" by legal cases pertaining to the changes, and that "despite having a majority of members with PSD ties, the Court overruled most of these initiatives as unconstitutional" (2008). The court was successful in exercising its autonomy and ruled objectively without undue pressure from the government. The Romanian judiciary also asserted its independence after Minister of Justice, Macovei, was sacked

for “overreaching” in her efforts to reform the judiciary. Her removal is often depicted as a clear example of Romania’s inability to prevent the country’s volatile political climate from interfering with significant judicial reform. The prime minister chose Tudor Chiuariu of the PNL to replace Macovei in 2007.

Chiuariu interfered with the judiciary’s efforts to investigate and try corruption politicians, as he informed the National Anticorruption Directorate (DNA) to stop investigations of top-level politicians, confirming fears that the PNL would seek to protect its politicians on the chopping block (Freedom House, 2008). Chiuariu also aimed to have the anticorruption prosecutor, Doru Tulus, fired for “investigating his political sponsors”, as he had already indicted eight MP’s (Freedom House, 2008). Surprisingly, Chiuariu faced unexpected backlash from the judiciary, preventing the firing from taking place. In protest of the decision, 60 DNA prosecutors, the National Union of Judges, and the National Institute of Magistracy (the body in charge of training magistrates) banded together to halt the politicized firing (Freedom House, 2008).

However, the judiciary’s efforts to resist politicization remained futile, as many of the bodies associated with the judiciary were incapable of carrying out their mandates. For example, in 2010, the National Integrity Agency (ANI), whose mission it is to investigate asset declarations, could not fulfill investigations of high-level politicians because the Constitutional Court ruled that the body’s mandate was unconstitutional (Vachudova and Spendzharova, 2012, 11). In April 2010, seven of the nine judges on the Constitutional Court were under investigation by the ANI and thus had reason to derail the DNA’s mandate, as it would halt the ongoing investigations into the judges’ asset declarations (Vachudova and Spendzharova, 2012, 11).

Romania's judicial corruption woes came to a head in 2012, when a constitutional crisis arose, completely derailing any possibility of securing an independent judiciary. President Basescu was re-elected in 2009, having survived an impeachment attempt by the opposition in 2007. Once again, in 2012, Basescu faced stiff opposition from the majority coalition, the Social Liberal Union (USL), comprised of the PSD, PNL, and the Conservative Party (PC). The prime minister at the time was Victor Ponta of the PSD. Ponta's government had just formed when the crisis arose, and was beginning to test the boundaries of its constitutional powers. Perju states that the Ponta government was "starved by many years in the opposition as a result of president Basescu's reelection in 2009" and, as a result, was eager to regain its power (2015, 255).

The president is granted the duty of serving as Romania's representative in international relations (Perju, 2015, 257). A debate arose between Ponta and Basescu over who was given the strict authority to represent the Romanian delegation to the EU in Brussels. The Constitutional Court was forced to intervene, ruling that Ponta could represent Romania if given an "express mandate from the head of state" (Perju, 2015, 257). Ponta accused the court of being politically "biased" and requested a formal mandate from the president—of which he was denied—and attended without permission (Perju, 2015, 257). The political game of "chicken" between Ponta and Basescu would come to culminate in the USL's efforts to formally enact impeachment procedures against the president in July 2012. The Ponta government claimed that Basescu had infringed upon "the constitutional attributions of the government and the Constitutional Court" and had violated "his constitutional duty of political impartiality" (Iancu, 2015, 163).

The Romanian constitution states that the president can only be impeached if one-third of MP's initiate the process, and, shortly after, the Constitutional Court must administer an advisory opinion on the subject (Iancu, 2015, 163). After the advisory opinion has been released,

an absolute majority of parliament (both houses) must vote to impeach the president—which in the case of Romania means that the president will be “suspended” (Iancu, 2015, 163). The caveat, though, is that the question of impeachment must be brought before the population via a referendum within 30 days of the passing of a parliamentary resolution (Iancu, 2015, 163). In order for the referendum to be valid a majority of the population registered on electoral lists must vote in favor of impeachment (Iancu, 2015, 164).

Ironically, the infringement upon the judiciary’s independence occurred at the hands of Parliament, not Basescu—despite what the charges brought against him would suggest. The Parliament’s governing USL coalition took strides to remove leadership in both houses, as well as the ombudsman on July 3, 2012 (Iancu, 2015, 165). Next, Parliament amended the Constitutional Court Law and Referendum Law, “in the simultaneous form of parliamentary Bills and emergency ordinances, in order to remove parliamentary decisions from the jurisdiction of the Court and to provide for a relative majority rule applicable to the impeachment referendum” (Iancu, 2015, 165). Iancu highlights that the purpose of these infringements was to ensure that if the bill was declared unconstitutional by the courts, the “analogous provisions in the ordinances would remain in force due to the lack of a legal remedy against them” (2015, 165).

The Ombudsman was removed by the Romanian parliament due to the nature of its assigned duties. In Romania, the Ombudsman is tasked with conducting investigations into “alleged illegal acts of the administration”, which would include the passing of unconstitutional acts by parliament if it is determined they were passed to allow for corrupt practices (Nielsen, 2012A). Additionally, the ombudsman is the only formal institution that can “directly challenge government ordinances” in front of the Constitutional Court (Nielsen, 2012A).



Although the parliament had called on Basescu to be impeached, the Constitutional Court had to rule on the decision. The court ruled that the decision of the parliament to move forward with impeachment procedures was not valid, thus the process should have ended. But Prime Minister Ponta, in his effort to carry on his political crusade against the president, continued with the impeachment procedures in parliament despite the court's ruling, and parliament voted to formally impeach Basescu (Nielsen, 2012A). This meant that the next phase of the impeachment procedures would begin: a national referendum.

On July 29, 2012, the population voted on the impeachment of the president. Eighty-seven percent of the population voted in favor of impeaching Basescu, but voter turnout was only at forty-six percent, thus it did not meet the majority requirement laid out by law and the results were invalidated (Pop, 2012). Prime Minister Ponta refused to accept the result and stated that the voter turnout was not accurate because the electoral lists left off critical voting populations (Pop, 2012). He asked the Constitutional Court to rule on the validity of the voter lists, and on August 21 the court ruled that the referendum results were invalid and President Basescu would not be impeached (Hoffmeister, 2015, 230).

During this lengthy referendum process, numerous judges on the Constitutional Court reported being under intense political pressures. On August 3, 2012, the president of the court, Augustin Zegrean, reported to the European Commission that members of the court and their families had received death threats (Nielsen, 2012B). One of the justices, Aspazia Cojocaru, reported receiving death threats as early as July 2012, which was well before the final court ruling at the end of August (Nielsen, 2012B). The government also publicly discredited the authority of the court in statements. The media reported that the leader of the National Liberal Party—a member of the USL coalition—called the court a “sham” and said “parliament should

throw out its members” (Nielsen, 2012B). Furthermore, Hipper states that the media highlighted that “the political battle over the presidency and the Constitutional Court created an open conflict between judges considered to be close to the USL... those considered supporters of the center-right party...and those close to the UMDR...” (2015, 221).

After the Constitutional Crisis ended, Ponta and Basescu put aside their differences and continued to govern (Csaky, 2012). The two reportedly signed a pledge to uphold “institutional cooperation between the presidency and the government” and “respect the Constitution on both sides” (*The Economist*, 2013). Basescu and Ponta remained in office together until 2014 when new elections were scheduled to take place. Basescu could not run again for a third term due to Romania’s rule that presidents can only serve two consecutive terms (*The Economist*, 2014). In the 2014 elections, Victor Ponta ran for president and was predicted to win given his credentials and political experience, but in a surprise turn of events, Klaus Iohannis, the former mayor of Sibiu and member of the PNL, beat him in the second round of voting. After his loss, Ponta refused to step down as prime minister, sparking outrage amongst the Romanian people (EuroNews, 2014). Eventually, though, in September 2015 corruption charges were brought against Ponta and he was forced to go on trial (BBC, 2015). To add to Ponta’s growing list of problems, a fire broke out in a Bucharest nightclub in November 2015, killing scores of people (BBC, 2015). Massive protests erupted across Bucharest, calling for Ponta’s resignation (BBC, 2015). He eventually resigned once it was revealed that the nightclub was not up to code and had ties to corruption (BBC, 2015). Ponta was replaced with Dacian Cioloș, a former EU Agriculture Commissioner and member of the European People’s Party (Mutler, 2015).

Today, Romania continues to struggle with ensuring the independence of its judiciary. After Ponta’s resignation as prime minister and the election of Klaus Iohannis as president in

2014, Romania appeared to be back on track to reform. The hopes of a de-politicized judiciary would remain fruitless, however, due to a shift from politicians interfering in judicial investigations to the Domestic Intelligence Service (SRI) overstepping its authority (Flasca, Castellani, and Hokovsky, 2015, 39). The latest controversy to hit the Romanian judiciary stems from the role of the DNA in investigating corruption amongst high-level officials. The SRI, in an effort to aid with corruption investigations, has been assisting with wiretapping for DNA cases, which the Constitutional Court ruled as unconstitutional in February 2016 (Flasca, Castellani, and Hokovsky, 2015, 40).

After the decision was made, Prime Minister Ciolos went over the court's head and passed an emergency ordinance that would allow the DNA to use the SRI's wiretapping capabilities (Flasca, Castellani, and Hokovsky, 2015, 40). According to the authors, the head of the SIR, General Dimitriu Dumbrava, "regarded the judicial system as a 'tactical field' in which the intelligence services were 'keeping their attention until their final ruling'" (Flasca, Castellani, and Hokovsky, 2015, 40). The Superior Council of Magistrates was forced to rule on the questionable statement made by the general, as there were concerns that the statement could potentially submit the court to further politicization (Flasca, Castellani, and Hokovsky, 2015, 40). The SCM did not find the comments to be inappropriate, and the issue was dropped completely (Flasca, Castellani, and Hokovsky, 2015, 40-1).

### ***Analysis of Judicial Independence***

It is clear after exploring Romania's poor history of safeguarding judicial independence that the country has a ways to go before full impartiality can be achieved. However, there are signs pointing to greater autonomy during times of politically sensitive crises, such as the 2012 Constitutional Crisis. I argue that there are two reasons for Romania's poor judicial

independence—and, in effect, its high judicial corruption levels: the tendency of political elites to engage in destabilizing political competition, and the ambiguity of the semi-presidential system. Vachudova argues that political competition is a necessary component of building a healthy democracy (2005, 15). In the Romanian case, while there are many parties capable of holding office, there are only a handful of parties that are frequently featured in governing coalitions—the PDL, PNL, and PSD. As a result, there is a tendency of parties to form coalition governments and then quickly dissolve them in an effort to consolidate power and sabotage those who interfere with a given party’s political agenda. This pattern of behavior is by no means conducive to promoting a thriving, independent judiciary. As a result, since judicial independence has not shown much improvement since the fall of communism, and it can be discerned that poor judicial independence has negatively impacted judicial corruption levels.

Romania’s 2004 “Watergate” scandal demonstrates that the independence of the judiciary has been poor since before the country acceded to the European Union. The PSD abused its authority as the key member of the governing coalition to screen investigations against its ministers, and admitted to preventing courts from fulfilling their mandates. The main driver behind these actions was the desire to implicate the PDL and PNL in corruption scandals so that the PSD could consolidate its power. The PSD’s monopoly over Romanian politics proved destabilizing, primarily due to its ties to Romania’s communist past. Since PSD politicians were constantly re-elected from 1989 until 2005, Romania was unable to build political parties independent of their communist history. According to Mendelski, the remnants of “old guard figures” or “senior networks left in power as a result of Romania’s incomplete post-communist transformation of judicial and political elites” is crucial for understanding this concept (2012, 32). When Romania began its democratic transition it was unable to purge the government of

former communist politicians. These communist politicians established a political culture in which sabotaging opposition parties, undermining institutions to consolidate power, and relying on patronage systems was acceptable, thus allowing judicial corruption to become systemic. For the PSD, further entrenching its control was more important than institutional reform after communism.

This finding is typical of many CEE states undergoing democratic transitions after the fall of communism. Indeed, Grzymala-Busse (2002, 124) writes that if parties were able to preserve their power as their country underwent the beginning stages of democratization—such as the PSD—then “successor parties could retain greater continuity in their organizational and patronage networks.” The author argues that political elites became fixated on consolidation of power and “continued to sabotage elite reform proposals and subverted any reformist signals. Programs slid back into references to the glories of the past...and reformists were sabotaged” (2002, 280). O’Dwyer would concur, stating that there is a relationship between the “sequencing” of democratization and the state-building process (2008, 213). The key here is that if a country begins its democratization as an “unconsolidated state” this leads to a tendency to rely on “patronage politics and a predisposition for runaway state-building” because the state was never able to eradicate remnants of the undemocratic regime (2008, 213).

Additionally, the competing interests of political elites contribute to the lack of judicial independence and moderate to high judicial corruption values. One caveat of the Romanian political system is that “ideological” political labels are “nominal”, as they “mean relatively little in a context where internal politics is characterized by variable geometry alliances and, moreover, endemic and uncontrollable parliamentary migration” (Iancu, 2015, 154). Therefore, political alliances are developed based not on common political interests, but rather for

consolidating power to prevent the opposition from gaining influence. Political alliances then become unstable and dissolve quickly without allowing reform to permeate the judiciary. An example of this was the dissolution of the PDL-PNL coalition by Prime Minister Tariceanu in 2007.

Hipper argues that the judiciary was caught in a battle between politicians with differing political interests, particularly those with intentions of reforming the judiciary and others who feared losing their long-standing control over the institution (2015, 142). The fight for the independence of the judiciary became a battle between pro and anti-Basescu forces (Tanasoiu, 2015, 172). Basescu—who was a key proponent of judicial reform—primarily used Minister of Justice, Monica Macovei, as a tool for achieving judicial independence, which created “hostility within the domestic political context” (Hipper, 2015, 160). It appears in the Romania case that any attempt at de-politicizing the judiciary is consistently met by opposition and attempts to either derail anti-corruption efforts completely or to water them down. However, scholars believe that the removal of the PSD from power in 2004 was a positive step forward for judicial reform, as it removed opportunity for the “old guard” politicians to harm political reform (Hipper, 2015, 196).

It remains clear, then, that in order to reduce politicization of the judiciary and corruption levels, the governing coalition and reformists must enjoy broad political support for the implementation of their reform efforts. Once the PSD led coalition—the primary antagonist in promoting judicial independence—regained power, the objective of the governing coalition changed drastically to include the dismantlement of progress through “removal of institutional leaders or disruptions of institutional settings” (Hipper, 2015, 196). This implies that political will on the end of the governing party must be high in order to increase the autonomy of the

judiciary—which is often not possible in Romania due to the constant turnover of governing coalitions. If progress does occur, it is short term and pro-reformers are often accused of committing political witch-hunts against the opposition, which undermines corruption investigations and court decisions. When corrupt practices continue, the acceptance of interference with the independence of the judiciary becomes internalized as a norm, thus allowing for corruption levels either to become stagnant or increase since little to no progress is made on judicial reform. However, it is also crucial to state that other institutional factors such as public opinion and EU leverage can influence the political will of governing party to enact judicial reforms, as both can put pressure on parties through agenda setting. This will be discussed more in depth in other sections of this chapter.

Romania has made some progress in maintaining the autonomy of the judiciary, but it is clear that brief moments of progress have not contributed to an overall reduction in judicial corruption levels. The court does exercise its authority to carry out its mandate under certain times of extreme political duress. The Constitutional Court was largely successful in its efforts to insulate itself from politicization during the 2012 Constitutional Crisis. This could be in part due to the fact that the crisis was large enough to draw international attention, however, scholars believe that the crisis demonstrated restraint on behalf of the court. During the crisis, the court agreed to play its role in the impeachment process, as specified in the constitution, and listened to the government's pleas to reconsider the validity of the referendum law and electoral lists. Perju notes that this was an effort by the court to “lower the stakes and diffuse political pressure...the outcome was strategic and quite lucid calculation on the part of the constitutional judges about a highly volatile political situation” (2015, 262). While the court demonstrated restraint on its part, the same courtesy was not provided by the USL, who used its power to

slander the efforts of the court and undermine its authority. However, clearly the courts were not completely free of political pressure during the 2012 crisis, as reports of political infighting between judges were published.

The second variable negatively impacting the independence of the judiciary is the semi-presidential system in place. Because there are so many political parties vying for control of government, the possibility arises that the president and the prime minister will be from different parties. This phenomenon is called cohabitation, and it can often result in negative repercussions for institutions such as the legislature or judiciary. With cohabitation comes the possibility that the prime minister and the president will have differing political views regarding judicial reform and independence. Gherghina and Miscoiu argue that the true issue stemming from cohabitation is the “different sources of legitimacy—popular support for the president and the legislators’ confidence in the prime minister—both actors can claim more power and destabilize the equilibrium” (2013, 668).

The issue of cohabitation in relation to securing judicial independence is best demonstrated by the events of the 2012 Constitutional Crisis. Under the Romanian Constitution, the president is granted a broad mandate with largely ceremonial powers. There is frequently overlap between the powers of the president and the prime minister, particularly in the areas of national security, judicial affairs, and representation abroad (Gherghina and Miscoiu, 2015, 677). In this conflict, the overlapping power that sparked the most controversy was the issue of representing the Romanian delegation abroad at European Council meetings, as it is typically the duty assigned to the president. However, ambiguity arose as to if the president’s role as the sole representative in foreign relations extended to the European Council. When Ponta’s government was installed, in an effort to consolidate power, the USL government used the ambiguity with the



division of power to reduce the power of the president and politically isolate Basescu (Gherghina and Miscoiu, 2015, 677).

The Constitutional Court ruled on the matter, declaring that Basescu has the sole authority to represent Romania abroad, but Ponta, who secretly went to Brussels without permission, undermined their authority. The USL government's blatant disregard for the authority of the court led to the accusations that President Basescu had overstepped his constitutional duties, triggering impeachment procedures. Perju summarizes the connection between the judiciary and the political bias of the Ponta government:

The growing independence of the justice system, and the related danger that immunizing courts from political influence poses dangers to the country's oligarchs, have unquestionably occurred during Basescu's presidency and are an essential part of the context in which Romanian semi-presidentialism held its first encounters with political cohabitation (2015, 254).

The author also adds that the origin of the political crisis had to "do with personal interest and fear of accountability for acts of corruption" (Perju, 2015, 254). Moreover, "the constitutional tension between legal and political forms has induced a state of perpetual ambivalence regarding the place of the presidency in the constitutional architecture, and, more particularly, never-ending disputes regarding the proper division of attributions between the President and Prime Minister" (Iancu, 2015, 159).

Given that the court's mandate is to rule on the constitutionality of laws and emergency ordinances passed by parliament, the Ponta government was forced to eliminate any potential threat to its political agenda by removing the jurisdiction of the court completely. When that did not work, the Ponta government would blatantly disregard the decisions of the court, calling them politically motivated or redundant. Thus, it can be discerned that cohabitation, since it results in the attempt by the prime minister's party to isolate the president in a power grab,

actually encourages the governing party to infringe upon the impartiality of the courts in order to further a political agenda.

In sum, judicial independence has not improved much in Romania, and if it has, it is only during times of intense political duress, in which the Constitutional Court is under scrutiny of the public eye. This leads to the assumption that the influence of public opinion may in fact be stronger than efforts to reform judicial independence. Romania's poor judicial independence has created an environment that allows judicial corruption to become systemic, resulting in little to no progress in decreasing corruption levels. As identified in the literature review, the two variables commonly associated with judicial independence are government system and levels of political competition. In the Romania case, the hypothesis stating that high levels of destabilizing political competition will contribute to higher levels of judicial corruption was supported. Hypothesis 2 stating that countries with parliamentary systems will have lower levels of judicial corruption cannot be assessed at this time because Romania is a semi-presidential system. This concept will be addressed further in the next chapter of this study. However, we can formulate an overall conclusion about the causal relationship between judicial independence and judicial corruption levels: countries with low levels of judicial independence will have higher levels of judicial corruption.

## **II. European Union Leverage**

Romania joined the European Union (EU) with Bulgaria in January 2007. After the fall of communism in 1989, Romania began looking towards the west and European Union membership. Romania's journey to EU membership took a different route than its neighbors, as the EU developed different policy methods to encourage the country to make strides towards

judicial reform. The EU consistently stated that Romania's main obstacle to accession was its poor judicial autonomy and inability to enact reform efforts.

The bulk of Romania's judicial reform occurred from 2000 to 2004, with the country implementing small and steady judicial reforms. The magnitude of the Romanian government's dedication to such reforms, however, was low. As with other EU candidate countries, the European Commission instituted a set of guidelines for the country to follow and annually published progress reports. In 1999, the European Commission stated that Romania was making progress, but that further judicial reform was needed before formal accession talks could begin (Hipper, 2015, 130).

The PSD-led government, under President Iliescu, instituted judicial reforms in response to EU pressure for further progress in the area of Justice and Home Affairs. Hipper notes that Romanian political elites were not keen on instituting judicial reforms, but that the overwhelming support of the public for EU accession progress was enough for Iliescu to resist backtracking on previous commitments (2015, 131). As a result, the government adopted the National Program for Prevention of Corruption (NPPC) in 2001 and the Anti-Corruption Strategy (NACS) in 2003 (Hipper, 2015, 131). Both of these efforts included programs specifically targeting the judiciary. In 2003, there was a turn towards solely instituting judicial reform. The government fixed glaring flaws with the 1991 Constitution relating to the judiciary, amending the document to include clauses clarifying the importance of judicial independence, as well as the jurisdictions of the High Court of Cassation and Justice and the Superior Council of the Magistracy (SCM) (Hipper, 2015, 135).

However, from 2000 to 2004, political elites lacked the enthusiasm necessary to push forward meaningful reforms because reform would interfere with their political agendas. As a

result, “by the end of 2001 during the European Council meeting in Laeken....the EU announced that accession negotiations with ten countries would be completed by the end of 2002, not including those with Romania and Bulgaria” (Hipper, 2015, 150). With the appointment of corrupt politician Rodica Stanoiu to the position of Minister of Justice in 2004 (of the infamous 2004 “Watergate” scandal), the Ministry of Justice became an “extended arm of the executive over the judiciary” and judicial reform was slow and ineffective (Hipper, 2015, 143). Stanoiu ordered the mysterious transfer of leadership of high-level courts to other bodies, and utilized the Service for Protection and Anticorruption (SIPA) for blackmail and oversight over the judiciary (Hipper, 2015, 143). After the 2004 Watergate scandal, the Romanian government revealed its hand to the European Commission, solidifying the view that the country’s judicial institutions were not well developed. The politicization of the judiciary remained a clear problem, and the dependence of the Ministry of Justice on the president and the PSD was criticized heavily. After the transcripts leaked, the “chief of the European Commission to Bucharest, Jonathan Scheele, expressed his concern on the matter and announced that he would transmit the information to Brussels” (Hipper, 2015, 155). Following the announcement, Iliescu replaced Stanoiu with Cristian Diaconescu, who was more reform-oriented than his predecessor (Hipper, 2015, 155).

The year 2004 marked a turning point in Romania’s EU accession journey. The upset of Basescu over PSD leader Nastase in the 2004 presidential election shocked the Romanian political scene. Basescu’s dedication to implementing judicial reform was evident, and left a sour taste in the mouths of many political elites. The PSD was out of power, and young, enthusiastic PDL and PNL politicians were eager to push forward with EU accession. Basescu’s appointment of reformist Monica Macovei to Minister of Justice was the critical turning point in judicial reforms, as it would come to kick start a movement of rapid reforms. In 2004, Basescu and

Macovei attempted to push through three judicial reform laws: the Law on the Superior Council of the Magistracy, the Law on the Organization of the Judiciary, and the Law on Magistrates (Freedom House, 2005). Under the laws, the SCM was given the authority to recruit, train, and promote judges and prosecutors, and a random assignment system for case distribution was installed (Freedom House, 2005). Additionally, the Minister of Justice lost the authority to appoint judges and magistrates to “higher courts, prosecutors’ offices, or management positions in the Superior Council, which [was] a positive development in terms of creating an independent judiciary” (Freedom House, 2005). Freedom House (2005) notes that although these laws were meant to enter into force in September 2004, they had yet to be implemented by the end of the year.

In the European Commission’s October 2004 Progress Report, the Commission called for the government to further secure the independence of the judiciary and for better implementation of the three-law reform package (European Commission, 2004, 145). Additionally, the European Commission “increased its pressure mechanisms in 2004 with its first red card against Romania in the form of gatekeeping. If Romania did not implement the conditionality of the EU by 2007, the EU threatened to implement gatekeeping once again” (Hipper, 2015, 161). The European Commission sought to encourage judicial reform through creation of a safeguard clause. In December 2004 the European Council created three safeguard clauses, one of which was in the area of judiciary and home affairs (Freedom House, 2006).

On June 1, 2005 Romania signed the Treaty of Accession and was given a tentative accession date of January 1, 2007. The safeguard clauses were included in the Treaty of Accession, and upon signing Romania agreed to a clause allowing the EU to postpone accession by one year “should [Romania] be manifestly unprepared for EU membership” (European

Commission, 2005). In response, Romania implemented in 2005 a new Action Plan that was specifically targeted towards reforming the judiciary, and had a scheduled completion date of April 2005. However, “conservative forces”—including the SCM and higher-level courts—resisted implementation of the three-law reform package and the Action Plan, and attempted to water down the reforms to consolidate their power (Hipper, 2015, 173). In June 2005, the EU enlargement Commissioner sent Romania “early-warning letters (i.e. “yellow cards”) that indicated serious shortcomings in seven areas, with reform of the judiciary and the fight against corruption being the most acute of them” (Hipper, 2015, 185).

In June 2006, judicial institutions placed intense pressure on the government to water down the proposed laws. The Constitutional Court was asked to rule on the laws to void the gap between reformists and anti-reformists. The court ruled that four of the laws in the reform package were unconstitutional, but their input was viewed to be politically motivated and resulted in additional concerns about Romania’s ability to commit to reform (Freedom House, 2006). The government took into consideration the Court’s decisions, and made the necessary changes.

One of Romania’s final reforms before achieving EU accession was transforming the Office of the National Anticorruption Prosecutor (PNA) into the National Anti-Corruption Department in 2005. The DNA proved to be largely successful after its creation, and was used to investigate and prosecute corrupt politicians, judges, and lawyers. According to Freedom House (2006), the DNA charged 744 people following its creation, including high-level politicians and judicial officials. On January 2007, Romania joined the European Union after showing tremendous progress in judicial reform. Hipper states, “the three-laws package was applauded as a genuine and ambitious attempt to adopt and implement EU conditionality by restoring the

separation of powers and granting the judiciary...” (2015, 179). However, in the EU’s final progress report the European Commission (2006, 9) stated that “further progress is still necessary in the area of judicial reform and the fight against organized crime and corruption” and that it would establish a procedure for measuring Romania’s progress post-accession.

Freedom House (2008) states that shortly after joining the European Union, the Romanian government began to revert back to its old habits of interfering with the independence of the judiciary, subsequently reversing all previous pre-accession reform efforts. After accession the European Commission created the Cooperation and Verification Mechanism (CVM) reports that are released twice a year to report on Romania’s progress. The European Commission (2007, 5-17) released a set of four benchmarks that Romania must annually meet to maintain good standing:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes
2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken
3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption
4. Take further measures to prevent and fight against corruption, in particular within the local government

The CVM reports are viewed to be an integral part of guaranteeing EU conditionality after accession.

In March 2007, the PNL-PSD government attempted to remove Monica Macovei from her position as Minister of Justice (Freedom House, 2008). Macovei’s work as Minister of

Justice is believed to be a primary factor behind Romania's remarkable judicial reform progress. Without her reforms, Romania would not have continued to meet the recommendations laid out by the European Commission in annual progress reports. Macovei initially refused to resign, but parliament voted to remove her, and, in April 2007, she was fired (Hipper, 2015, 200-1). Macovei was replaced with Tudor Chiuariu, who instituted a new Action Plan in order to ensure Romania made progress under the new CVM benchmarks (Hipper, 2015, 201).

In order to meet the second benchmark laid out by the CMV reports, the Romanian government passed a law creating the National Integrity Agency (ANI). The body is in charge of monitoring asset declarations for high-level officials—including judges and politicians—and investigating conflicts of interests (Hipper, 2015, 203). The Commission noted that the creation of this body demonstrated “substantial progress in reaching this benchmark” (2006, 13). Nevertheless, there was growing concern over specific wording in the law that would allow for high-level officials to escape investigation for asset declarations while still protecting their image of promoting the rule of law. Freedom House states in its 2008 *Nations in Transit Report*:

Originally, the goal was to set up an agency able to verify and take action in a zone not covered by any other institution in Romania—namely, wealth that cannot be justified by income(s) of the verified person. However the adopted form of the ANI legislation replaced the concept of "illicit" wealth instead of "unjustified" wealth. An article in the Romanian Constitution claiming that "all wealth is presumed licit" has so far allowed the few defendants charged with illicit enrichment to file for non-constitutionality and escape prosecution. In fact, individuals have no legal obligation to preserve any records of how they acquired their wealth, and the burden of proof is on the prosecutors. (Freedom House, 2008)

The European Commission expressed concern with this wording in its 2007 CVM report, and urged that it be changed (2007, 14). The government listened to the Commission's suggestion and changed the wording from “illicit” to “unjustified”, but when the law was voted on, the



governing coalition deviated from the EU's wishes and changed the wording back (Freedom House, 2008).

Unfortunately, the ANI came under attack by conservative, anti-reformers who were seeking to dismantle any agencies that threatened to expose their corrupt practices. In April 2008 the Constitutional Court ruled that certain sections of the law establishing the body were unconstitutional (Hipper, 2015, 207). Those in favor of dismantling the organization stated that the issue arose from the idea of “'unjustified wealth’, as “wealth of “unproven” origin could not be confiscated, since it would be considered to have been legally acquired...” (Hipper, 2008, 207). The head of the SCM asked the Romanian Ombudsman to pressure the Constitutional Court to “adjudicate on the constitutionality of laws, specifically in regard to the constitutionality of the ANI” (Hipper, 2015, 207). The Ombudsman refused, and the issue was left unresolved until 2010, when the Constitutional Court “completely eradicated the ANI’s scope of activity” (Hipper, 2015, 207). The ability of the ANI to fulfill its mandate was seriously limited, thus it could not investigate asset declarations. Parliament eventually amended the unconstitutional parts of the ANI law, but the changes “limited the effectiveness of the ANI’s investigations and introduced less transparent and comprehensive asset declarations, rendering the agency essentially toothless” (Freedom House, 2011).

The European Commission responded, stating that the “new law seriously undermines the process for effective verification, sanctioning and forfeiture of unjustified assets...[and] interrupts the encouraging development of ANI and breaches commitments taken by Romania upon accession” (2010, 3). The pressure from the CVM report caused parliament to adopt a new law reinstating the ANI’s ability to monitor asset declarations, but, according to Freedom House

(2011), “though the ANI generally survived the assault on its mandate, in December, its budget was significantly reduced...”.

During the same time that the ANI crisis was unfolding in 2010, the European Commission was contemplating admitting Bulgaria and Romania to the Schengen free movement area. Spendzharova and Vachudova (2012, 54-5) state that there was great “speculation” that Romania’s possible admission to the Schengen zone would be dependent on reestablishing a functioning ANI. The authors note that in December 2010, France and Germany “publicly linked the two, declaring in a joint letter that Schengen entry should be postponed” until Romania solved its judicial corruption issues (2012, 54-5). Following the rather lackluster effort of the government to solve the ANI crisis, Schengen talks were delayed for Romania indefinitely in June 2011 (Spendzharova and Vachudova, 2012, 45). The efforts to link Schengen entry to judicial reform were not well received in Romania. Prime Minister Boc vehemently disagreed with this EU policy and was not receptive to implementing additional judicial reforms (Spendzharova and Vachudova, 2012, 55).

Romania’s judicial reform efforts completely unraveled during the 2012 Constitutional Crisis. As discussed in the first section of this chapter, the Constitutional Crisis of 2012 was essentially a battle between reformists and conservatives. A battle erupted between President Basescu and Prime Minister Ponta, both from different political parties, over the right to represent the Romanian delegation to the EU in Brussels. Basescu was accused of infringing upon his constitutional duties and the rule of law, and the opposition accused Ponta of going on a political witch-hunt. The USL coalition sought to impeach Basescu, having taken umbrage with his aggressive anti-corruption reforms. As a result, the parliament suspended the jurisdiction of the Constitutional Court in order to ensure that necessary laws passed to impeach Basescu were

not ruled unconstitutional. The parliament also made statements undermining the authority of judicial decisions, and often ignored decisions of the Constitutional Court that were not conducive to achieving the USL's goals.

After the crisis unfolded, Prime Minister Ponta was summoned to Brussels to discuss the rule violations unfolding in Romania. The European Commission President gave Ponta a list of eleven points that "required answers", including the jurisdiction of the Constitutional Court and judicial independence (Tanasoiu, 2015, 187). The European Commission expressed concern with the country's rule of law violations, and stated that it questioned the government's "commitment to respect the rule of law and independent judicial review" (2012, 3). The Commission also stated that it would not be ending its annual CVM reports (2012, 19). Finally, the Commission provided policy suggestions that must be implemented to solve the crisis. Overall the Commission recommended that the government respect the Constitutional Court's decisions, amend Emergency Ordinances, publish acts in the Official Journal, appoint a new Ombudsman, and appoint ministers free of corruption scandals (European Commission, 2012, 20-1). According to the Commission, Ponta wrote to the Commission stating, "all of these requirements have or will be met" (European Commission, 2012, 21). The Commission also used the international media to express concern for the events that transpired throughout the crisis. European Commission leadership publically condoned the use of death threats to intimidate Constitutional Court judges (EurActive, 2012).

Hoffmeister notes that the Ponta government was responsive to the requests of the EU, but only sparingly. The parliament did amend some of the Emergency Ordinances passed early on in the crisis, but failed to promote a new Ombudsman in a timely fashion (2015, 230). Additionally, while the government allowed the Constitutional Court to hear decisions pertaining

to the referendum crisis, the government frequently made statements undermining the authority of the court. Thus, while the government was not legally interfering with the mandate of the courts, its public statements ended up harming the court's credibility, resulting in justices receiving death threats. In the Commission's 2013 CVM report, the Commission found that "Romania has implemented several but not all of the Commission's recommendations aiming at restoring rule of law and the independence of the judiciary" (2013, 2).

### *Analysis of European Union Leverage*

After examining the effect of EU leverage on instigating judicial reforms in Romania before and after accession, a conclusion can be made about the EU and its coercive power over member states. Overall, EU conditionality proved effective in putting pressure on the Romanian government pre-accession to lower judicial corruption, but once the "carrot" of EU accession was achieved, Romania began to backslide on its reform efforts, causing corruption levels to stagnate. Vachudova, an advocate of EU conditionality's positive results on member states, argues that "what makes the prospect of cooperating closely with EU representatives—and complying with the EU's extensive requirements—attractive to domestic elites is the promise of eventual membership" (2009, 59). Theoretically, it is the single prospect of membership that should have driven judicial reforms in Romania's accession process.

The best examples of EU conditionality proving successful occurred from 2000 to 2006. EU conditionality ultimately proved crucial in pressuring the PSD governments of the early 2000's to make incremental changes to the country's judicial reform agenda. Hipper notes that the Strategy for the Reform of the Judiciary implemented under the Nastase government after the publication of the EU's 1999 progress report was a signal that the government began to view the possibility of opening formal EU accession talks as a viable and worthwhile policy initiative

(2015, 139). Additionally, the EU's refusal to admit Romania into the EU with the rest of the post-communist CEE states demonstrated the European Commission's lack of faith in the integrity of Romania's institutions. The delay was what arguably pushed the government to begin taking reforms more seriously.

However, one major domestic setback that prevented the reforms from performing to their true potential was the undeniable reluctance of the conservative political elite to create meaningful and lasting reforms. It appeared as if the Nastase and Iliescu government were simply going through the motions of judicial reform leading up to 2007, rather than seeking to build comprehensive reforms that could uproot corruption. The reforms passed during this time were done in a piecemeal fashion, and even if they were comprehensive, stakeholders in the judiciary frequently watered them down by placing pressure on politicians.

The PSD government, due to its deep ties to Romania's communist past, proved to be the primary obstacle to passing important judicial reforms. According to Hipper, "the majority of the PSD, its coalition in the Parliament, and the leadership of President Iliescu had a high political consensus regarding joining the EU while keeping the costs as low as possible" (2015, 153). Hipper cites the efforts by parliament to implement "quick" judicial reforms and the "adoption of complex strategies to combat corruption...without eliminating political influence..." (2015, 153). Iliescu's appointment of Rodica Stanoui as Minister of Justice was a poor choice, and demonstrated the government's inability to completely loosen the reigns over the judiciary. While literature indicates that the removal of Stanoui was not brought about by pressure from the European Union, but rather the upcoming December presidential election, the effect of the EU's conditionality remained helpful as the signing of the Treaty of Accession drew near (Hipper, 2015, 153). Hipper states that the Nastase government needed to "gain external legitimacy and

approval for the closure of the accession negotiation process. Since increased domestic pressure and external monitoring would no longer allow for the process to stop at the emulation of legislative templates, domestic actors engaged in increased rule creation and maintenance” (2015, 153).

The judicial reform process was also pushed forward by the promotion of Monica Macovei to the position of Minister of Justice. Without Macovei’s persistence, many of the judicial reform packages would not have been passed, or if they were passed, they would have been weak. The EU also added the safeguard clause to the country’s Treaty of Accession in 2005, which created additional benchmarks for the country to meet. The “carrot” in this case was the threat of delayed accession past the agreed upon date of January 1, 2007. When the EU scolded the government for its interference with the three-law package, the government immediately changed the laws to align them with EU policies.

It can be argued that EU conditionality can only explain part of the story behind Romania’s efforts to reform its judiciary. The pressure from the Romanian population also was a deciding factor, as it incentivized politicians to listen to their constituents. After the release of the Commission’s 1999 Progress Report and the decision to delay accession until after 2005, Romanian public opinion about implementing EU reforms skyrocketed. As a result, politicians needed to implement some judicial reforms in order to remain in good standing with the EU, whom would then comment on progress made in its annual reports. The media would then publish the reports, which could sway public opinion of the government. Vachudova and Sprenzhárova (2012B, 55-6) note that “sustained domestic incentives centered on winning elections and holding power are crucial to ongoing reforms that consolidate the rule of law, which explains the mixed reform record of Romania.”

Therefore, while it cannot be denied that the EU did place significant pressure on Romania to reform its judiciary pre-accession, public opinion and political will also acted points of pressure leading up to 2007. Ristei notes, “there were clear indications of political will manifested through comprehensive diagnoses of corruption, the intermittent inclusion of the main stakeholders in the policy-making process, the adoption of some substantive reforms, and the creation of an objective and transparent monitoring system” (2010, 357). Thus, political will on the part of the Romanian government was also crucial, as it was incentivized by the prospect of facing future reelection.

After its accession to the Union in 2007, it can be seen that the EU largely lost its coercive power in lowering corruption in Romania. This was best demonstrated with the ANI crises of 2007 and 2010, when the Constitutional Court attempted to interfere with the mandate of the asset declaration agency, even though it was clearly a violation of one of the safeguard benchmarks. In its 2008 *Nation in Transit Report*, Freedom House was critical of the EU’s decision not to trigger the safeguard clause. Freedom House argues that since the introduction of the safeguard was created explicitly for a situation of this magnitude, the Commission should have triggered the clause but was too concerned about the economic and political repercussions of doing so (2008). Hipper argues that when Romania achieved the “carrot” of EU accession, not even the CVM reports could rectify the EU’s loss of control over the progress of judicial reforms (2015, 224). Mendelski (2012, 24) would concur with Hipper, arguing that, “the EU has been a very important change agent (among other domestic ones) in triggering judicial reforms and bringing about change in de jure and capacity-related aspects of judicial quality, it has not been able to change domestic power structures and create a fully independent, impartial and incorrupt judiciary.”

It can be determined that Romania's efforts to curb judicial corruption levels also stagnated because the EU allowed Romania to accede to the union even though it clearly had not formed mature judicial institutions. Mandelski notes that "the focus on formal institutional change, increasing magistrates' salaries or the introduction of computer devices and management systems" was ill-placed as they do not "necessarily produce better and more accountable and impartial judges or change the overall judicial and political culture" (2012, 35-6). Finally, the author states that EU membership has actually created "less legal stability and more systemic incoherence due to the revision of legislation and the introduction of newly created agencies and bodies...and a more independent but less accountable judiciary" (Mendelski, 2012, 35-6).

During the 2012 crisis, the European Commission changed its conditionality tactics, even going as far as supplying direct policy suggestions for how to restore the rule of law in the 2012 CVM report. However, in the Commission's report from 2013, it noted that only some of the reforms had been enacted. Thus, it can be seen that even under significant external political pressure, accession to the EU has not made a dramatic impact on curbing judicial corruption levels. According to Mendelski, this occurred because Romania has a tendency to "cherry-pick" the reforms that the country will implement, as prescribed by the EU (2012, 36).

In conclusion, EU leverage has been generally effective in lowering judicial corruption levels in Romania. If Romania had not been successful in demonstrating progress in its corruption levels, the EU would not have let it into the Union. Nonetheless, the Romanian government passed crucial reforms that only prompted surface level changes necessary for decreasing corruption. As can be seen, though, Romania continued to struggle with maintaining the independence of the judiciary post-accession and was not consistent with implementing meaningful reforms. The country has come a long way since the fall of communism in regards to



corruption reform, but EU membership cannot fully explain the country's progress in judicial corruption levels. As Mendelski argues, EU conditionality and "reinforcing domestic elites" leads to "institutional change" (2012, 37). This being said, the overall effect of EU membership in the medium-term was effective, particularly when Romania was in the process of acceding to the Union. As a result, Hypothesis 3 stating that EU member and candidate countries will have lower levels of judicial corruption was supported.

### **III. Media Freedom**

The Romanian media has transformed since the fall of communism in 1989, but still remains only "partly free" today (Freedom House, 2016). Under communist rule, the Romanian media was controlled by the state, thus there were limitations on transparency and the freedom of expression (Coman, 2010, 58). Once the communist regime collapsed, there was a rush by political elites to buy up media outlets, including television, print, and online formats. The Romanian media teeters on a fine line between being dependent on politicians for funds and reporting corrupt practices. Over the years, there has been an increase in the politicization of the media by politicians and the judiciary.

In the early 2000's the government heavily regulated Romania's media. Freedom House noted in its 2002 *Freedom of the Press Report* that libel and slander were still punishable with jail sentences. Additionally, the government passed the Audiovisual Law in 2002, which "maintains the government's strict control over the distribution of television and radio licenses" (Freedom House, 2003). Things failed to improve over the course over the next year, as Freedom House reported over 400 criminal cases involving members of the media and more than 14 accounts of journalists being physically attacked for their work investigating organized crime and corruption (2004).

In 2006, there was an increase in the ownership of Romanian media outlets by politicians and the “concentration in media ownership continued to increase” (Mungiu-Pippidi, 47). During this time, Sorin Ovidiu Vantu and Dan Voiculescu dominated the media scene. Vanut owned the newspaper, *Cotidianul*, the magazine *Academia Catavencu*, and a radio station (Mungiu-Pippidi, 47). Dan Voiculescu, a rather polarizing figure in Romania’s political and media scenes, owned “three TV channels, a daily, and a financial weekly that openly wage his political battles for him” (Mungiu-Pippidi, 47). Voiculescu is a member of the Conservative Party (PC) and served terms in the Romanian Parliament, as well as had a brief stint as leader of the PC. His party enjoyed close ties with the PSD and enjoyed membership in governing coalitions. Interestingly, Voiculescu was revealed to be a member of the Securitate under the Ceausescu regime, thus his ties to corruption in Romania run deep (Mungiu-Pippidi, 47). Former Prime Minister Ponta also at one point had controlling stakes in Radio 21 (Coman, 2010, 590).

Freedom House has rated the Romanian media as “partly free” in its annual *Freedom of the Press* reports since 2007 upon acceding to the EU (Freedom House, 2007-2016). While improvement has been made, overall the country’s media independence scores have remained stagnant. Transparency International noted in its 2011 report assessing corruption in Romania that the “media is not a profitable business and...investigative journalism is not among the most important journalistic activities. In depth reporting, investigations and other such “value-added” journalism pieces are a rare occurrence, especially in television” (2011, 144-5). Transparency International also stated that the judiciary, prosecutors, politicians, and the police are exposed in the media, but that “the coverage is often superficial, dealing with momentary cases rather than with systemic issues” (2011, 145).

Additionally, the government has passed questionable laws that have indirectly interfered with the ability of the media to investigate judges and report corrupt practices. In its 2010 report, *Active Watch*, a partner of Reporters without Borders, stated that “journalists and the public were on the verge of losing the ability to unconditionally access statements of assets and liabilities of dignitaries (public interest information” (12). During the ANI crisis of 2010, the Constitutional Court essentially dismantled the ability of the investigative body to report on asset declarations of judges. The court ruled the mandate of the body to be unconstitutional, thus suspending any investigations into asset declarations of judges, prosecutors, and politicians who could have been implicated in dealing corrupt practices. Although the government sought to reform the laws to make the body’s mandate constitutional, “the new system would have prevented public scrutiny of the dignitaries’ assets and liabilities” (*ActiveWatch*, 2010, 12). Thus, journalists would not have been able to properly report on corrupt practices, decreasing transparency and the overall accountability of politicians and judicial employees to the public.

There is also a bitter relationship between the media and the judiciary, as the media is frequently accused of putting undue pressure on the judiciary and vice versa. The volatile relationship between the two actors was best depicted during the 2012 Constitutional Crisis. The media and judiciary took turns exchanging barbs with each other, with USL politicians instigating the conflict. Members of Romania’s independent media were slandered by the USL coalition when they published articles viewed to be unfavorable by the governing coalition. In particular, Prime Minister Ponta and his coalition harshly criticized any journalist reporting on the government’s failed attempts to secure the impeachment of President Basescu.

In a joint public condemnation released during the crisis, Reporters without Borders and *Active-Watch* highlighted particular cases in which journalists were targeted in comments by the

government. According to the statement, a member of the USL coalition, Dan Sova, “accused Carmen Valica, a journalist with the state-owned broadcaster RRA, in early July of being behind European commissioner for justice Viviane Reding’s criticism of the Romanian government” (Reporters without Borders, 2012). Sova stated that Valica had tried to “influence” the commissioner by asking about “the imminent arrest of constitutional court judges” (Reporters without Borders, 2012). This prompted the state radio’s ethics committee to investigate Valica, although she was eventually cleared of attempting to sabotage the courts (Reporters without Borders, 2012).

Interestingly, the Romanian government has also cracked down on the rights of foreign journalists to investigate corruption within the country. During the 2012 crisis, numerous foreign reporters were accused of being “agent[s] of influence”, sent to sabotage the USL government under orders from President Basescu (Reporters without Borders, 2012). *The Economist* (2012) reported that similar instances occurred with journalists working for *Der Spiegel*, *El País*, *Deutsche Welle*, *CNN*, *Le Monde*, *USA Today*, and many more. One reporter from *Der Spiegel* was accused of “lying and misinforming his audience about Romania’s political crisis” because he was critical of the government’s legally ambiguous actions taken during the crisis (*Economist*, 2012).

The media has attacked the judiciary for its efforts to prosecute high-level officials, particularly politicians who have deep ties to media moguls or the media chains themselves. The European Commission noted in its 2014 CVM report that it had “received a large number of representations from judicial institutions concerning direct criticism by politicians and political motivated media attacks on individual judges, prosecutors and members of their families, as well as on judicial and prosecutorial institutions” (European Commission, 2014, 3). Additionally, in

2014 Dan Voiculescu was charged with blackmail and was sentenced to ten years in prison. By 2014, Voiculescu had created an impressive media empire, and had amassed a significant amount of power as a prominent politician. ActiveWatch notes that his sentencing “gave the media under his control a new opportunity to attack the magistrates and to try to destroy the credibility of the judicial process” (2015, 11). Voiculescu’s TV stations “attacked” the judges and “resorted to manipulation techniques in order to turn Voiculescu into a “victim of the regime in the public’s eyes” (ActiveWatch, 2015, 11).

In an effort to influence the outcome of the case, prominent journalists and reporters from Voiculescu’s channel, Antena 3, sent an “open letter” to Voiculescu in which they rallied behind their boss (ActiveWatch, 2015, 18). After the unfavorable decision was released convicting Voiculescu, the same reporters sent another letter, discrediting the ruling as an “abuse” and a “political trial targeting the very newsroom of Antena 3 and claimed that it was an attack against media freedom” (ActiveWatch, 2015, 18). The reporters blamed Basescu, one of Voiculescu’s political enemies, for the outcome of the court decision and staged a protest (ActiveWatch, 2015, 18). Voiculescu supporters assembled against the courts, and ignited “violent attacks” against the judges to voice their displeasure with the “wrongful” imprisonment of their boss (ActiveWatch, 2015, 11).

Most recently, the Constitutional Court has taken it upon itself to take action against reporters who criticize the body. In July 2016, the court stated it would sue reporter Liviu Avram for his comments criticizing the judiciary. Avram called the judges on the court “villians” (Bucureasa, 2016). The proceedings were not criminal, but the Court stated it was looking to make an example out of Avram to prove that reporters cannot make statements criticizing the integrity of the court (Bucureasa, 2016).

### *Analysis of Media Freedom*

Upon investigating the role of the media in reporting on judicial corruption, it can be seen that the media plays a rather small role in uncovering corrupt practices within the judiciary. This is due mostly to the considerable dependency of the media on politicians. Either politicians or businessmen with strong ties to politicians own Romanian media conglomerates, thus increasing the likelihood that the media will be incapable of maintaining impartiality. Coman argues that the efforts of politicians to capture the judiciary arose from their desire to further their own political interests (2010, 588). This was best seen when Voiculescu attempted to utilize his ties to the Atena 3 network to put pressure on the judges before a decision was made on his court case. Although his attempts proved futile, this is unfortunately a common occurrence in Romania that is hindering the prosecution of corrupt officials, who then continue to perpetuate the problem through consolidating influence over the media market. Comaj argues that the relationship between media moguls and corruption is crucial for understanding how levels of corruption are influenced. The author argues, “countries where government controls large parts of media (especially newspapers) tend to have higher levels of corruption” (2013, 23).

Furthermore, the government does not respect the independence of the media, and by criticizing its efforts to report on corrupt findings or passing legislation to limit transparency, this hurts the ability of the Romanian media to act as a watchdog. During the Constitutional Crisis, not only was domestic media discredited, but as were efforts of the international media to report on the transgressions of the ruling government. This highlights the concerning fact that the government, during times of political crisis, will unapologetically undermine the freedom of the press if it interferes with its political agenda. While the government does not pass laws directly targeting the judiciary and media, the use of political pressure is not conducive to promoting an

independent media and judiciary. If the government or judiciary interferes with the ability of the media to report on its corrupt practices, the media cannot place pressure on government veto players to implement judicial reform. Mungiu-Pippidi concludes, “naturally, the agenda set by this kind of media looks like a permanent war on anti-corruption, not on corruption” (47). Thus, Hypothesis 4 stating that countries with low levels of media freedom will have higher levels of judicial corruption is supported.

## **Chapter 5: Findings and Comparisons**

This chapter will compare and contrast the findings from the case studies presented in Chapters 3 and 4. The purpose of this chapter is to explore relationships found in the case studies to explain broader regional trends. I will break down the four variables featured in each case study and will briefly summarize the implications of the findings for the larger picture of judicial corruption in Central and Eastern Europe. Overall, the case studies proved to be enlightening, demonstrating the complexity of the region's systemic judicial corruption problems.

### **Judicial Independence**

In both Romania and Albania, levels of judicial independence have remained relatively stagnant, but are still high. Poor judicial independence is clearly a factor influencing the countries' relatively high levels of judicial corruption since the early 2000's. The two variables selected to measure judicial independence were destabilizing political competition and government systems. The findings indicate that both of these variables have contributed to poor judicial independence in Romania and Albania, which has in turn resulted in slow, if any, progress in lowering judicial corruption levels.

An interesting parallel between the Albanian and Romanian cases is that high levels of destabilizing political competition between primary parties have resulted in the inability of political elites to relinquish their hold over the judiciary. I found that, in both countries, this problem is due to the failure to properly eradicate remaining traces of their communist pasts. After the fall of communism, the countries failed to create viable political parties capable of promoting a culture in which tampering with the independence of the judiciary is not acceptable. Additionally, the parties that formed after communism in both countries are personality driven and are not founded upon basic political ideologies. This means political parties, particularly in



Romania, are more likely to create coalitions out of convenience rather than ideological similarities, making reform difficult. The personality driven politics has created a highly competitive environment between the main parties in Albania and Romania, which causes them to undermine the judiciary's autonomy in order to further their political interests or consolidate their power.

In Albania, intense fighting between the PD and PS has resulted in the opposition blocking judicial reforms aimed at lowering corruption levels, as well as the appointment of judges to high-level courts. By obstructing the appointment of judges, the courts are unable to function, as they are operating without full capacity and cannot fulfill their mandates. The destabilizing political competition between the PS and PD has led to a de-facto two party system, which further perpetuates the problem of poor judicial independence, as it results in the parties stalling reform efforts out of spite. Another source of conflict is that the interests of the opposition parties in Albania are often secondary to those of the governing coalition, thus the minority party frequently blocks reforms out of spite. The opposition is not given proper representation on governing bodies, as seen in 2003 when the HCJ purposefully skewed the balance of the CEC to favor PS when a PD candidate was supposed to be selected to be in accordance with electoral law. The HCJ became a pawn of the PS to carry out its political vendetta against the PD before elections.

Similarly, Romanian political parties are not viable, as the lingering remnants of its communist past have created political parties that are concerned less with political ideologies and more with consolidating their power (Iancu, 2015, 154). As a result, governing coalitions will frequently disband alliances and regroup with other parties to account for changes in political interests, resulting in inconsistencies with implementation of judicial reform. In the late 2000's,

the battle between pro and anti-Basescu forces resulted in two impeachment attempts by the governing coalition in an effort to isolate the president. The governing coalition dissolved its alliance and formed a new governing coalition with the minority party in order to carry out the impeachment attempt in 2007. By isolating the pro-reformist president, the governing elites are able to obstruct judicial reform packages or use the courts as their pawns to carry out political agendas.

One difference between Romania and Albania is that, while political parties are engaged in frequent political battles, in Albania if one party is leading the government the other is defaulted to being the opposition party. In Romania, this is not the case, as coalition compositions are not predictable. For example, there was a brief time in which the PDL and PNL were in power together, but when President Basescu's fight against corruption began to threaten the power of old-guard politicians, the PNL left the coalition to join the PSD. The PNL and PSD are not on similar ends of the political spectrum, thus this was not an alliance between likeminded parties, but rather an alliance of political convenience. Albania's political parties remain on either side of the spectrum, and do not as easily create new governing coalitions given that they are run by party leaders that vehemently oppose any policies or reform efforts brought forth by the other.

A commonality between the Albanian and Romanian cases is that there appears to be a struggle between reformists and anti-reformists. In Romania, this manifested in the form of fighting between the reformist president, Basescu, and the anti-reformist government. Any attempt by the reformist president to adopt judicial reform packages was frequently met with resistance by the government. While this also occurred in Albania, it was not between the president and the parliament, but between the two political parties. Since the PS and PD are the

only two parties capable of forming coalition governments, the opposition party would become the “anti-reformists”, while the governing coalition would paint themselves as the “reformists”. In reality, both parties proved to be impediments to true judicial reform, but the opposition or “anti-reformists” would stall reforms in an effort to delay them to use this as leverage in the next round of elections.

This brings me to my next finding: low political will is undoubtedly an issue in both countries, and this has led to reluctance on behalf of the politicians to relinquish their political control over the judiciary. This would account for the lack of judicial reforms over the years in both countries. Even if political elites in Romania and Albania do pass judicial reforms, the implementation of them is often weak, resulting in a lack of progress. Parties in both countries have become experts in delaying judicial reform when it does not coincide with their political interest. However, Romanian and Albanian political parties use different tactics to either delay reforms or interfere with the autonomy of the judiciary.

The method of choice for Romanian politicians is to pass weak judicial reforms that are incapable of producing meaningful change. Romanian political elites also pack courts with loyalists in an attempt to undermine reform efforts. In doing so, the politicians have used the courts as their scapegoats to make it appear as if judicial reforms are passed, but in reality they are using the political allegiances of the courts to water down the legislation, making it less effective. This was best seen in 2005 when actors in the judiciary, who feared a weakening of their power, picked the Minister of Justice’s three-law package and Anti-Corruption Plan apart.

The popular tactic employed by Albanian political elites is to either block reforms completely, or to challenge them in the courts. With the passing of the major reform package in 2016, the PD and PS both seemed receptive to the prospect of passing the reforms, but as soon as

the package made it through parliament the PD challenged the laws. The law that caused the most political debate was the controversial vetting law. The PD accused the PS of creating an unnecessary witch hunt on judges and worked with the Union of Judges to take the law to the Constitutional Court in an effort to have it ruled unconstitutional. If reforms are blocked, how can they be implemented? This is the main strategy of Albanian political parties who are opposed to implementing reforms that can aid in lowering corruption levels. This is not to say that things have not improved in Albania. Recently the Constitutional Court blocked the efforts of the Union of Judges and the PD to hold up the vetting law, subsequently subjecting judges who made the decision to intense scrutiny and investigations in the near future (Mejdini, 2016).

Thus, it can be seen that politicians in Romania and Albania have also placed political vendettas above judicial reform, positioning the courts in the middle of a volatile war between parties. Therefore, the variable of destabilizing political competition does have an impact on influencing poor judicial independence, which then inhibits the ability of courts to function, as well as decreases the overall quality of judicial reforms necessary for lowering corruption. These findings definitively support Hypothesis 1, stating that countries with high levels of destabilizing political competition will have higher levels of judicial corruption.

Finally, the type of government system in place proved to play an integral role in Albania and Romania's failure to lower judicial corruption levels over time. In both countries, the issue of government system results from the distribution of power between the president and the prime minister, as prescribed by each country's respective constitution. The relationship between the ruling government—run by the prime minister—and the president is ambiguous in Romania and Albania, which has led to a struggle for power and influence over the judiciary by politicians.

The struggle for power undermines the autonomy of the judiciary, as the courts are frequently used as pawns to further the political agendas of the ruling elites.

Tensions between the prime minister and the president have limited the countries' efforts in curbing judicial corruption in both cases. The issue posed by the semi-presidential system in Romania is that of cohabitation between the President and the PM being from different parties. Cohabitation leads to the isolation of the president, who was, in Romania's case, the primary force behind judicial reforms. The issue with Romania's semi-presidential system is that the ambiguity between the distribution of powers between the prime minister and president leads to one actor attempting to assert its power over the other. The courts inevitably get trapped in the middle of struggle between the two, which undermines its independence. This problem is exacerbated further when one of these two actors is a reformist and the other is seeking to slow down judicial reforms. This was best seen in 2012 during Romania's Constitutional crisis. The reasoning for the USL's decision to impeach President Basescu was that he had overstepped his constitutional duties and infringed upon the rule of law. However, due to the ambiguous nature of the separation of powers, it is unclear if this was truly the case or if the USL coalition simply wanted an excuse to remove the reformist president to further their political agenda.

In Albania, the issue posed by the parliamentary system is that the power to appoint judges and other judicial actors is granted to the president, thus if the president and ruling coalition are not from the same party, the parliament will often veto the president's nominees. The second, and primary issue, with the Albanian parliamentary system in place is that it is not a traditional parliamentary system. In Chapter 3 I classified Albania's judiciary as *lean-parliamentary* because of the unusually disproportionate number of powers granted to the president.

The Albanian president should, in theory, be a largely ceremonial figure. In practice, however, this is not the case, as the president—up until July 2016—wielded a significant amount of power over the judiciary. The president was one of the sole appointers of judges and held a position on the High Council of the Judiciary, a body that oversaw the evaluation, promotion, appointment, and transfer of judges. The prime minister in the lean-parliamentary system does not have the authority to assist with judicial appointments, and when the president and prime minister are from different parties, a struggle ensues between the two. The struggle occurs because the governing party is attempting to assert its power and in doing so must block presidential appoints to the judiciary in order to promote its political interests. The president, on the other hand, has too much authority and can pack the court with loyal followers, as demonstrated when President Nishani attempted to pack the court with PD supporters after the PS swept the parliamentary elections earlier that year. The president also held seats on many of Albania's judicial bodies, thus increasing the likelihood the president could influence the decisions made behind the scenes.

Overall, I find that both parliamentary and semi-presidential systems can attribute to high levels of judicial corruption, suggesting that parliamentary systems are not in fact better at lowering judicial corruption relative to other government systems. It appears that both government systems have contributed to high levels of judicial corruption, but for different reasons. In Romania high judicial corruption levels result from the issues posed by cohabitation, but in Albania it is a result of the allocation of powers between the president and the prime minister in the *lean-parliamentary* system. However, both countries share a commonality: the distribution of powers between the president and prime minister is ambiguous in nature. The ambiguity creates a power struggle between the two political actors and their respective parties,

leading to poor cooperation on judicial reform, which has led to a lack of improvement in judicial corruption levels since 2002. The ambiguity also allows one political actor to test the boundaries of its constitutional limitations, as seen in the Romanian case when Prime Minister Ponta defied the orders of the Constitutional Court and triggered a Constitutional Crisis. It can be determined then, that distribution of power is a crucial concept necessary for evaluating causes of judicial corruption. It is the distribution of power between the prime minister and president that leads us to classify government systems. If the distribution of power is ambiguous, it does not matter if a country has a parliamentary, semi-presidential, or presidential system: judicial corruption will remain endemic if political actors do not have powers with clearly defined parameters and limitations. Therefore, Hypothesis 2 stating that countries with parliamentary systems will show to have lower levels of judicial corruption is not supported.

### **European Union Leverage**

Albania and Romania, although one a candidate and the other a member country, have roughly the same levels of judicial corruption. After delving into the EU reform process in Albania and Romania, I found that EU membership and candidacy status is effective in lowering judicial corruption, but there are limits to its effectiveness. Overall, Hypothesis 3 stating that EU members and candidate countries will have lower levels of judicial corruption has been supported. The findings of this study indicate that the effects of European Union membership on judicial corruption levels have proved positive in Romania, but only when the country was partaking in the accession process up until 2007. This being said, the EU accession process has improved Romania's corruption levels over the years, and this should not be understated. While Romania's levels are still high, it is quite possible that without undergoing the EU accession process, its judicial corruption levels would be much higher today. In Albania, I found that EU

leverage was not as effective in lowering corruption levels in the early stages of the accession process, but picked up after it was rejected candidacy status three times and continued to progress after receiving candidacy status in 2014. Reforms in Albania were adopted in a piecemeal fashion up until the country obtained candidacy status in 2014, and then began to speed up, lowering overall judicial corruption levels.

The European Commission used varying tactics in Romania to encourage the passing of judicial reforms. The Commission delayed accession until 2007, used the “carrot” of Schengen entry to encourage judicial reform, implemented safeguard clauses with an extensive list of benchmarks that had to be met post-accession, and developed the CVM reports after accession to continue evaluating the country’s progress. In Albania, the publishing of annual progress reports had the greatest impact on pushing the government to make progress in judicial reform up until 2004, when it began to link poor public opinion of the judiciary to the performance of the governing coalition. As the reforms began to stagnate and numerous political crises arose, the EU began to directly engage with the government by acting as a mediator and assigning strict deadlines/criteria for the country to follow. Perhaps the EU’s most powerful conditionality tactic is its authority to reject or delay a country’s progress in the accession process. After the EU held Romania back from acceding to the Union with the Visegrad countries in 2004, this helped propel reforms forward, allowing it to obtain membership in 2007. Similarly, the EU’s rejection of Albania’s candidacy status three times from 2010 to 2014 demonstrated to the Albanian government that the adoption of reforms was not enough: without implementation of the reforms Albania had no chance of obtaining candidacy status. This proved to be the “push” the Albanian government needed, as it moved on to the next stage in the accession process in 2014.



In both the Romanian and Albanian cases, one of the EU's most important roles was that of an agenda setter for the reform progress. Through the use of EU progress reports, the European Commission directly laid out detailed criteria for Romania and Albania to meet as they progressed throughout the accession process. In Albania, as the country moved farther along in the accession process, specifically after the SAA came into effect, the European Commission outlined specific reforms for the government to follow, as all of the progress reports moving forward were meant to increase performance on the objectives laid out in the EU's 2010 Opinion. The EU set similar agendas for Romania in its progress reports, including well after accession with the CVM reports. The safeguard clauses helped guide the Romanian government so as to ensure that it could not renege on previous commitments or stall reforms that were in the process of being adopted. As a result, the agendas set by the EU helped propel reforms forward, thus lowering corruption levels.

The EU also made use of its formal and informal roles as an overseer of the accession process in Romania and Albania. Formally speaking, the EU published regular progress reports that set an agenda for the Albanian government to follow, but it also acted within an informal setting to help encourage reforms to pass. Notably, the EU's top leadership made informal comments to the press to help spur judicial reform and place pressure on political elites. This was best seen in 2016 when many EU leaders specifically asked the government to pass the reform independent of the annual progress reports. In Romania, the EU took on a formal role in leveraging its conditionality through the annual publication of CVM reports and the creation of the safeguard clauses. It did not deviate much from this, though, as the formal publication of reports were necessary for guiding the Romanian government, who needed clear objectives to follow otherwise it would revert on many of its promises. Overall, it appears that the EU

preferred to use its formal role in Romania, and changed tactics in Albania once it became clear that formal agenda setting needed to be supplemented with other conditionality tools.

A common trend between the two countries is that in the early 2000's EU conditionality proved relatively ineffective between 2000 and 2004. This implies that in the early stages of accession negotiations, the influence of domestic factors may interfere with the strength of EU leverage. This is due to the fact that at this time political elites in Romania and Albania had few tangible benefits to passing judicial reform packages, as the next "carrot" in the accession process was not in sight. The role of public opinion was also strong in both countries, but I believe that the role of public opinion played a greater role in triggering reforms in Romania than Albania in the early 2000s. Obviously, citizens in both cases wanted to accede to the Union. However, the pressure placed on Romanian elites in the form of public opinion levels was the greatest from 2000 to 2004 in Romania. It is difficult to definitively compare the effectiveness of EU leverage during each time period (200-2004; 2004-2008; 2008-2012; 2012-present) because Romania and Albania were in different stages in the accession process during these times. However, an overall trend can be depicted about the effect of EU leverage in lowering corruption levels: it can be discerned that the effect of EU membership status on judicial corruption levels is positive once a country obtains candidacy status or is about to accede to the union, but then becomes stagnant after obtaining membership. This is in accordance with much of the literature presented in Chapter 1 on the effects of EU leverage on corruption levels. The findings mimic those of Dimitrova, who similarly argued that EU leverage is most effective pre-accession through agenda setting (2010, 137). My findings also support the findings of Garbbe's study, which found that EU conditionality is strongest pre-accession because of the "carrot" of obtaining membership, but wanes off after membership is achieved (2014, 42).

EU conditionality played the most important role in curbing judicial corruption levels in the lead-up to the Romania's accession, as it dangled the "carrot" of EU accession over the heads of Romanian politicians who were held accountable to their constituents, all of whom viewed EU accession favorably. When Romania was engaged in accession talks after 2000, it showed remarkable improvement in passing incremental judicial reforms that were praised by the European Commission as positive steps forward in curbing judicial corruption. Once Albania obtained candidacy status, the country passed comprehensive reform packages that overhauled most of the facets of the country's judiciary the European Commission viewed as weak or ineffective. The country even removed political actors from key positions on judicial bodies, such as the president. This finding proves that once a country achieves candidacy status, the main policy goal of EU accession is almost in sight, thus countries push forward with important policy initiatives in order to accede to the Union. This supports literature stating that the effect of the "carrot" is more powerful than the actual "stick" of EU conditionality leading to EU accession (see Mavrikos-Adamou, 2013).

However, an important caveat that must be mentioned is that the political will of politicians to actually implement reforms must be present. Political will, coupled with the conditionality of the EU, is what proved most effective in lowering judicial corruption levels in Romania (Mendelski, 2012, 37). When President Basescu and Minister of Justice Macovei were conducting judicial reforms in Romania, they had key interests in reforming the judiciary, and thus used their power to help push through reforms that were critical in positively impacting judicial institutions, thus lowering corruption for the time being. However, once Macovei was fired and Basescu faced opposition from governing coalitions, the political will to institute reforms and continue to uphold the integrity of the judiciary remained low. Political leaders,

when faced with pressure from the EU to reform policies post-accession, would listen in the first round of negotiations on a law, but then would revert back to the old document, completely ignoring the protests of the EU when the final version of the law was passed. Furthermore, many authors argue that the incremental reforms conducted by Romanian politicians in the lead-up to accession were enough to get the country into the Union, but were not enough to create viable, independent judicial institutions (see Mendelski, 2012, 35-6). Thus, the possibility of maintaining its progress from before accession remained dim.

Given that Albania has not yet acceded to the EU, the effects of membership cannot be evaluated with this case study. We can, though, evaluate the effect of EU leverage in the early stages of the country's accession process until present. The positive effects of EU conditionality overall cannot be denied. Although there were flaws with EU conditionality in the early stages of accession because the Union was focused on the 2004 enlargement, after 2009 when the country's SAA came into effect, the Union's leverage over political elites was crucial in the gradual lowering of judicial corruption levels. It is worth noting that a relationship between political will and EU conditionality in lowering corruption levels is evident in Albania as well. Mavrikos-Adamou (2013, 1166) found that the prospect of EU membership was ineffective at times in creating meaningful change in Albania's judicial corruption levels because the EU is viewed as a "carrot" and not the "stick". The author also noted that even after the prospect of obtaining candidacy status was delayed, the government still did not feel incentivized to implement any of the reforms (2013, 1166). However, once the country achieved candidacy status in 2014, the government worked diligently to pass a comprehensive reform package, even collaborating with the PD in order to prove its dedication to judicial reform. The EU viewed the 2016 reform packages as a positive step forward, and praised Albania's efforts at judicial reform.

This being said, the package was stalled in the courts for quite some time, as the PD challenged one of the crucial laws. The actions of the PD demonstrate that without the political will of politicians to carry on with the reforms after they are passed, EU conditionality means little in the grand scheme of things.

There is an important external force that must be discussed when evaluating the overall effects of EU leverage on lowering Albanian judicial corruption levels: EU enlargement fatigue. There is much debate about the effect of EU enlargement fatigue on reform processes in possible member countries, particularly the Western Balkans. I briefly touched on this in Chapter 3, but will elaborate further. As demonstrated in Romania's case study, the process of EU accession did not go as smoothly as intended. The country struggled to adopt reforms, and when it did it frequently watered them down or did not implement them properly. Furthermore, after Romania acceded to the Union, it reneged on many of its commitments and underwent a constitutional crisis five years later in 2012. The country's institutions, particularly the judiciary, are not completely democratic.

Peshkopia argues that the flawed results from the Romanian case have made the EU wary of expanding to include the rest of the post-communist countries (2014, 213-4). Additionally, the 2004 enlargement to include the Visegrad countries was intensive, and required lots of coordination. To immediately follow with another round of enlargement in 2007 increased the total member states to 25, creating coordination issues (Bogdani and Loughlin, 2007, 91). After the economic crisis, many EU countries also began to look inwards, and were not nearly as concerned with expanding when they have their own problems to contend with (Panagiotou, 2011, 373-4). Furthermore, the Western Balkans are more challenging than other CEE candidate countries were, as they are poorer, posing significant political and economic issues. As a result, it

is possible that this “enlargement fatigue” has also contributed to the lack of political will on behalf of Albania’s government to institute reforms necessary for lowering corruption. Kmezcic states that the “downplay of enlargement had negative repercussions in the Balkans, undermining the credibility of the membership promise” (2015, 11-12). The author argues that this could decrease political will of the government and actually lower public opinion of the EU (Kmezcic, 2015, 11-12). Public opinion is a primary motivator for officials, so if the public no longer views EU accession as a necessary policy goal, then elites will no longer act to pass reforms necessary for reaching EU membership.

Thus, it can be discerned that the effect of EU membership on curbing judicial corruption levels is effective, but only for candidate countries or countries in the late stages of accession talks. Albania’s judicial corruption—while still an area of concern, hence the increase in EU pressure in recent years—has improved since achieving candidacy status. Has the country seen a dramatic reduction in corruption levels? No, but the progress cannot be ignored, nonetheless. One problem Albania faces is that political elites are not keen on passing judicial reforms that are capable of making a significant impact on corruption levels. Accordingly, it is necessary to note that political will of politicians is important when evaluating the overall effects of EU membership on the independent variable. Romania showed to have progress pre-accession, but much of that was reversed post-accession, as the country had already obtained membership. The EU did threaten Romania on numerous occasions post-accession to get its act together, but the political elites did not take the EU’s threats seriously, undermining the effect of EU conditionality. Once CEE countries obtain membership to the EU, the incentives to continue judicial reform progress remain low and corruption levels often become stagnant. However, corruption levels do lower once a country becomes a candidate or member country relative to

before the entered into negotiations with the EU. Thus, these finding supports Hypothesis 3, stating that Candidate and EU member countries will have lower levels of judicial corruption.

### **Media Freedom**

Interestingly, the effect of the media on exposing corrupt practices was hard to account for in this study. Hypothesis 4 states that countries with low levels of media freedom will have higher levels of judicial corruption. Both Romania and Albania's results support this hypothesis. These findings also support theories presented in the literature review, particularly the work of Kurkchian, who argued that politicization of the press can lead to the covering up of corrupt practices, which negatively influences corruption levels (Transparency International, 2007, 106).

In Albania, the issue of self-censorship has forced investigative journalism into the background. The media has been responsible for leaking cases in which courts have placed pressure on journalists, but exposing corrupt practices is not entirely common. Although there are no formal limitations on freedom of expression, the Albanian media is not as active in the fight against judicial corruption as initially believed. Numerous studies argued that a country with minimal limitations placed on the freedom of expression should in fact have lower levels of judicial corruption, as transparency of the judiciary and the right to express one's opinions were believed to encourage the media to investigate corrupt practices (Treisman, 2004). BIRN (2015, 8) stated that the self-censorship in Albania has limited the public's access to information as result of low publication rates on corrupt practices. Additionally, even if the media exposed corrupt practices, the court system did not fulfill their duty of investigating the corrupt practices to the fullest extent, either due to political influence or conflicts of interest.

In Romania, a dynamic relationship between politicians, the courts, and the media was uncovered. Unlike in Albania, the Romanian media does investigate some corrupt practices and

there is not a high level of self-censorship. Romania also has a ranking of “partly free” and, similarly, the independence of the media is frequently compromised. Politicians, or businessmen with political ties, own most media outlets in Romania, and there are cases in which the media has tried to interfere with judicial decisions on behalf of their owners. Additionally, even when the media does attempt to be impartial and exposes judicial corruption, the government or the courts criticize the media in an attempt to discredit them. Thus, there is an ongoing battle between the court system and the media that results in little progress in curbing judicial corruption. Of particular concern is the fact that the Romanian government has little respect for the rights of the foreign press to investigate matters of domestic politics. In sum, the findings from the Romania case study indicate that the Romanian media has not played a significant role in curbing judicial corruption levels, either because of political influence placed on the media that prevents them from investigating, or because the courts discredit or threaten journalists with legal action, as seen by the recent actions of the Constitutional Court in 2016.

In all, the media in Romania and Albania have had little effect on curbing judicial corruption, which could explain why judicial corruption has not improved over the years and remains high today. The media plays a role in investigating some cases of judicial corruption, but it is not active. Any efforts the media does take are frequently met with criticism or monetary fines by the courts, essentially preventing the media from fulfilling its duty as a watchdog. The primary factor that separates the Romanian from the Albanian case is that journalists in Albania are forced to self-censor themselves. Although Romania’s media is politicized, some journalists do speak openly about corruption, but only when it suits the political agendas of their owners. Whereas in Albania, journalists purposefully self-censor themselves due to fear of facing repercussions from politicians or businessmen. Because the media in both countries is unable to



properly shed light on corrupt practices, the accountability of judges and prosecutors has decreased, and corrupt practices have continued to go unreported. Overall, my hypothesis pertaining to the relationship between media freedom and judicial corruption values has been supported.

### **Summary of Findings**

In sum, the findings suggest that all three variables (the media, judicial independence, and EU membership) play an important role in explaining why judicial corruption levels in Romania and Albania are high. The findings indicate that most literature criticizing the EU's conditionality and leverage over member countries is partially true. The time period in which EU accession proves to benefit countries the most is when they are in the accession process, particularly after obtaining candidacy status. These findings could partially explain why CEE EU member countries, like Romania, are under fire for committing "democratic backsliding", indicating that it could be a trait specific to the region. Similar problems pertaining to backsliding in the rule of law have occurred in Hungary and Poland.

The variable of judicial independence also proved to be significant, as both Romania and Albania suffer from poor judicial independence as a result of intense, destabilizing political competition amongst key parties and their respective government systems. Political competition that results in parties sabotaging one another to consolidate power frequently results in very little judicial reform progress and undermines the independence of the judiciary. Government type also impacted judicial independence, but the findings indicate that ambiguous distributions of power between the prime minister and president is a crucial component of understanding why certain government systems could be more effective in combating judicial corruption than others. Overall, a correlation between low judicial independence and moderate to high levels of

corruption was depicted. Finally, while both Albania and Romania have no constitutional restrictions on freedom of expression, the media plays a limited role in investigating corruption scandals. Media circles in both countries are subject to external pressures through interference with their role as a watchdog, either by being threatened with fines, legal action, or blatant criticisms by the government. As a result, corrupt practices have been allowed to continue and judicial corruption is now systemic. This explains why judicial corruption levels remain high today.

These findings have broad implications at the regional level. The overall findings regarding EU membership are significant for predicting the likely effect EU conditionality will have on corruption levels in Albania and other candidate countries when they accede to the Union. These findings will prove to be particularly relevant for other CEE countries that are in the midst of, or will begin, the accession process. EU enlargement fatigue could play a substantial role in explaining why these countries' future accession processes are delayed. As stated previously, the findings pertaining to EU membership can also explain why similar crises are occurring in other CEE member states, suggesting that EU membership in CEE states could be largely ineffective in lowering corruption levels once a country achieves membership. Of course, additional research would need to be done to verify this conclusion, but it is worth noting, nonetheless. The project's findings also suggest that while the media in most CEE states may appear relatively free, it is still under significant pressure from external actors and should not be ignored. Finally, broadly speaking, it can be assumed that political elites and their efforts to interfere with the mandates of the judiciaries in CEE states are largely responsible for the moderate to high levels of judicial corruption found across the region. Elites have entrenched

themselves in the political scene after communism, and as a result have allowed corrupt practices to continue to the point where corruption is systemic and likely irreversible for the time being.

This observation is particularly relevant to the current events transpiring in Romania, where the government has come under fire for adopting a law that would de-criminalize specific acts of corruption. Immediately following the news, Romanians across the country took to the streets in a massive protest against the government and its blatant disregard for the rule of law. The cries of Romanians were heard, as the government was pressured to withdraw the law (Lyman and Gillet, 2017). It appears that the only way to truly change the incentives for ruling elites is through mass protest and pressure by the population. Hopefully the Romanian example sets a precedent for other CEE countries that can bring about a positive change in the actions of old-guard politicians.

## Conclusion

This study has examined the causes of judicial corruption in two Central and Eastern European countries: Albania and Romania. The four variables tracked from 2000 to the present were political competition, government system, EU membership and candidate status, and levels of media freedom. After delving into the rich histories of these two post-communist countries, a number of important causal relationships can be drawn. Below is a table summarizing the main findings from this study:

*[Insert Table 6]*

As discussed in the previous chapter, a relationship between levels of political competition and levels of judicial corruption was found. In Romania and Albania, the intense, destabilizing political competition between the primary governing parties has resulted in a culture in which undermining the independence of the judiciary is not only an acceptable means of consolidating power, but also an acceptable tool for derailing judicial reform efforts. Levels of judicial independence in both countries have remained stagnant since the early 2000's, and this has contributed to the moderately high levels of judicial corruption in both countries. Thus, it can be seen that poor levels of judicial independence can augment levels of judicial corruption. Political elites in both countries appear to prefer political interests over the creation of an autonomous, thriving judiciary. This is primarily because elites in Albania and Romania failed to form viable political parties after communism, thus political parties lack clear ideologies and are heavily influenced by personality-driven politics.

Interestingly, the influence of government type on judicial corruption levels proved to be insignificant in both countries. It was hypothesized that parliamentary systems would have lower levels of judicial corruption, but this was not the case, as Albania's judicial independence issues

were comparable to those of Romania. What truly matters when discussing government systems is the distribution of powers between the prime minister and president. The more ambiguous the distribution of powers is, the more likely it is that a power struggle will ensue between the president and the prime minister over control of the judicial branch. In Albania in particular, this arises from the fact that the Albanian government system can be classified as *lean-parliamentary*, which distributes too much authority over the judiciary to the president when in reality it should be vested with the prime minister. In Romania, the ambiguity arises from the issue of cohabitation—when the president and prime minister are from different parties, thus leading to the political isolation of one of the actors, mainly the actor that is more reform-minded. Also, in both cases, the judiciary is frequently used as a pawn of politicians to carry out their dirty work. The courts act as scapegoats for politicians who want to water down reforms but do not want to risk appearing as weak to their constituents.

In regards to the effect of EU membership and candidacy status on judicial corruption levels, the findings support those of scholars presented in the literature review (see Vachudova, 2009; Garbbe, 2014; Dimitrova, 2010). Both the Romanian and Albanian cases demonstrate the powerful effects of EU conditionality on corruption levels. The Albanian case demonstrated that EU leverage is moderately effective in lowering corruption levels in the early stages of the accession process, but also that EU leverage grows strongest after a country obtains candidacy status and stagnates after it accedes to the Union. The Romanian case confirmed what most scholars had already believed: the effect of EU conditionality in lowering corruption levels appears to become stagnant once a country accedes to the Union, as the “carrot” of EU membership has been achieved. While Romania and Albania continued to struggle with judicial corruption, obtaining EU membership and candidate status has had an overall positive effect on

judicial corruption levels over the years. Below is a table depicting the change in judicial corruption levels from 2000 to the present:

*[Insert Table 7]*

Clearly, EU leverage played a minimal role in lowering judicial corruption levels from 2000-2004 in Romania and Albania. I believe this to be partially due to the fact that political elites lacked incentives and a proper sense of urgency to adopt meaningful judicial reform packages during this time period. During this four-year period, reforms were adopted infrequently in both countries, and if they were adopted they were watered down or obstructed by political elites. Although Albania and Romania were in different stages of the EU accession process from 2004 to 2008, a common trend can be seen: as a country closes in on reaching the next “carrot” in the accession process—membership in the Romanian case, and the possibility of obtaining candidacy in the Albanian case—EU leverage increases and corruption levels begin to decrease. Additionally, once a country is denied reaching the next “carrot” in the accession process, it begins to exhibit positive changes in reform adoption as a result of EU leverage. This was best demonstrated in both Romania and Albania, when Romania was held back from acceding with the Visegrad countries in 2004 and Albania was rejected candidacy status three times by EU.

Clearly, the role of the EU as an agenda setter proved to be crucial in Albania and Romania, as the EU used its informal and formal leverage over the potential member countries to bring about change in judicial corruption levels. It appears that the EU preferences using formal leverage in Romania, opting to create specific safeguard clauses and a CVM report for after accession to monitor reforms. The tactics of the EU used in Albania resembled those of Romania, but a greater emphasis was placed on using informal leverage after the country was

granted candidacy status to place pressures on political elites. However, EU formal leverage in Romania appears to be limited today because political elites have lost the incentives to follow EU recommendations after acceding to the Union, as the country has now begun to reap the benefits of accession without continued reform progress.

I argued that domestic factors matter when discussing the effect of EU leverage on judicial corruption levels. In both Albania and Romania, it was clear that because public opinion about acceding to the EU was high, political elites were more inclined to adopt reforms to please constituents. If elites did not demonstrate effort in adopting EU reforms, it was more than likely this would have negatively impacted their chances of re-election. Additionally, it is crucial to note that politicians, although they would pass reforms, were not deeply committed to the implementation of the reforms. It appears as if Romanian and Albanian political elites were simply going through the motions of reform at times in order to move on to the next phase of EU accession. Political will was also an important factor in implementing EU reforms, as the more comprehensive reforms were, the more unlikely it was that political elites would choose to follow through on them. This is mainly because reforms were meant to lower the politicization of the judiciary, which was contrary to the political interests of the government, thus they had little incentive to see them through.

The influence of EU enlargement fatigue is only applicable to Albania. Scholars have heavily debated whether the EU is going through an enlargement fatigue, and I believe it is possible that this has impacted Albania's EU accession progress, but only to a minimal extent. Given the current political and economic situation in Europe, it is understandable that the Union would be hesitant to admit countries that could negatively affect the stability of the bloc. This being said, I believe that any delays in Albania's accession are primarily influenced by Albania's

poor track record in adopting and implementing reforms. Its track record only reinforces the image that EU member states have of countries in the Western Balkans: they are still in the midst of developing strong, democratic institutions, and thus most countries are somewhat politically unpredictable. However, I do agree with some scholars, such as Kmezic (2015, 11-12), that it is possible the constant rejection of candidacy status for Albania could have led to some backtracking on reforms, as it demonstrates that the EU is not committed to bring Albania into the Union in the near future.

Finally, I found that countries with low levels of media freedom do in fact have higher levels of judicial corruption. This is because investigative journalism in Albania is not popular, and self-censorship on the behalf of journalists has created a climate in which corrupt practices go undocumented, thus allowing judicial corruption to become systemic. In both Romania and Albania, the media is heavily politicized, as all media outlets are typically reliant on politicians for funding. As a result, judicial corruption practices are frequently not reported on. In sum, my findings support the theory that low levels of media freedom can cause higher levels of judicial corruption.

### **Limitations and Areas of Improvement**

Overall, this study proved very successful, but it does possess limitations. I should note that the hardest part about conducting a study on countries in Central and Eastern Europe is the lack of availability of data, particularly on judicial corruption. This was not as much of a problem in Romania, as literature on judicial corruption is more readily available. Given Albania's size and its status as a democratizing country, literature on judicial corruption proved to be limited at times. While I was able to put together a comprehensive overview of the country's struggles with judicial corruption, there were times where I found it difficult to piece



together the country's entire story. In order to improve this study in the future, I would attempt to conduct interviews with judges, political elites, or other persons with first-hand accounts of judicial corruption in Albania to supplement the secondary sources I found.

A second limitation of this study is that it only analyzes two case studies. While this proved to be adequate for the purposes of this project, in the future I would include more case studies in order to account for the political and economic diversity of the region. Additionally, I would choose a case that varies more on the independent variables, as Romania and Albania lacked variability on some selected variables. By not including a third study, I was unable to select a case that was not a EU member or candidate country. Had I selected a non-EU member country it would have perhaps strengthened my argument about the effect of EU membership and candidate status on judicial corruption levels. I also would include an upper-level income country, such as Slovenia or Poland, in order to test if higher levels of economic development have an effect on corruption levels. It also would be interesting to select another Western Balkan country that is not a EU candidate country, to examine the effect of EU enlargement fatigue on overall corruption levels. Finally, I would select cases that are "pure" parliamentary and presidential systems. While Romania is a semi-presidential system and Albania a parliamentary, neither falls neatly in either category. It would be best to choose countries that fall neatly on either side of the spectrum, so as to not have overlap between the cases on this variable.

In order to obtain a more complete picture of the causes of judicial corruption at the regional level, I would also include more independent variables. While three proved to be a sufficient amount of independent variables for the two case studies used in this study, in order to avoid falling into the trap of over-generalizing causal relationships—a common issue with a case study methodology—I would add at least two more independent variables in order to strengthen

my arguments. Two independent variables worth investigating further are the effects of civil society pressure on judicial corruption and the influence of left/right parties on influencing judicial corruption reforms. Although my research did not cover the influence of leftist parties on judicial corruption levels, I did come across it numerous times in works of other scholars. This could perhaps be an interesting avenue to pursue further in the future, as many of these countries retained remnants of communist left parties after 1989.

### **Concluding Remarks**

The countries of Central and Eastern Europe have progressed since the fall of communism in 1989, demonstrating their resiliency and commitment to rejoining their Western counterparts. The results of this study were enlightening, and demonstrated that the effect of integration on corruption levels may not be as clear-cut as it would appear. Like any body, the EU has its flaws, but the overall effect of its conditionality shows to have positive effects on the democratization processes of potential member countries. It is my hope that this study has shed light on the benefits that EU leverage can have on successfully lowering corruption levels in order to contribute meaningfully to the academic debate on this topic. This project will prove particularly relevant in the coming years as the remainder of the Western Balkans states either conclude or begin their own accession processes.

One important point that I would like to end with is this: the European Union, and the rest of the world, should not give up on the countries of Central and Eastern Europe. It is clear that these countries, including Romania and Albania, have a ways to go before they become true democracies. Even countries such as Poland and Slovakia, two of the first CEE states to join the EU in 2004 and considered among the best “success” stories of EU conditionality, have shown to have their own problems with maintaining reform post-accession. However, this study has

demonstrated that EU conditionality can be effective in changing the agendas of political elites in post-communist countries. It is clear that EU conditionality is most effective when the Union applies direct and specific pressure on member countries. If the EU can continue to strengthen its methods of enacting conditionality in the future, it is quite possible that CEE countries will be more responsive in the future to EU pressures calling for reform.

A second overarching point I would like to make is that, while a country may appear to be “democratic” because they are a member of the European Union and other global institutions, it does not mean that they are in fact *democratic*. This was best seen with the findings from the Romania case study, where it was demonstrated that EU member countries are capable of having “partly free” media outlets and weak judicial independence even though many would believe them to be fully democratized. Thus, I believe that it is important to look past the surface level of a given country’s appearances in an effort to understand the root of the cause of judicial corruption in CEE states. Time will tell how these countries will continue to progress over the coming years, especially as the European Union undergoes internal changes. But one thing is certain: unless they can overcome their endemic judicial corruption problems, it is possible that all future efforts for reform moving forward will remain futile.

## Appendix

**Table 1: Global Perceived Levels of Judicial Corruption**

Country	Perceived Levels of Judicial Corruption
Burundi	4.6
Peru	4.4
Ukraine	4.4
Bolivia	4.3
Bulgaria	4.3
Mexico	4.3
Senegal	4.2
Croatia	4.1
El Salvador	4.1
Kosovo	4.1
Mongolia	4.1
Venezuela	4.1
Cambodia	4.0
Cameroon	4.0
Lithuania	4.0
Romania	4.0
Ghana	3.9
Macedonia (FYR)	3.9
Moldova	3.9
Serbia	3.9
Yemen	3.9
Colombia	3.8
Kenya	3.8
Argentina	3.7
Liberia	3.7
Nigeria	3.7
Russia	3.7
Chile	3.6
Pakistan	3.6
Rwanda	3.6
South Korea	3.6
Zimbabwe	3.6
Bosnia and Herzegovina	3.5

Czech Republic	3.5
Ethiopia	3.5
Malawi	3.5
Morocco	3.5
Sierra Leone	3.5
Slovenia	3.5
Afghanistan	3.4
Belarus	3.4
USA	3.4
Zambia	3.4
Indonesia	3.3
Poland	3.3
Taiwan	3.3
Brazil	3.2
Latvia	3.2
India	3.1
Japan	3.1
Philippines	3.1
China	3.0
Canada	2.9
Hong Kong	2.9
Hungary	2.9
France	2.8
Israel	2.8
Vietnam	2.8
Iceland	2.7
Mozambique	2.7
Iraq	2.6
Germany	2.4
Sudan	2.4
Finland	2.0
Denmark	1.6

*All values were obtained from Transparency International's 2011 Global Corruption Barometer Index, available at <http://www.transparency.org/gcb201011/results>, last accessed 19.03.17*

**Table 2: Comparative Values for the CEE region**

Country	Perceived Levels of Judicial Corruption	EU Membership Status	GDP/Capita	Press Freedom Status	Government System	Rule of Law (out of 16)	Political Pluralism and Participation (out of 16)
Ukraine	4.4	Not a member	\$3,082.50	Partly Free	Semi-presidential	6	10
Bulgaria	4.3	Member	\$7,712.80	Partly Free	Parliamentary	10	14
Croatia	4.1	Member	\$13,507.40	Partly Free	Parliamentary	11	15
Kosovo	4.1	Not a member	Not available	Partly Free	Parliamentary	6	10
Lithuania	4.0	Member	\$16,444.80	Free	Semi-presidential	13	16
Romania	4.0	Member	\$9,996.70	Partly Free	Semi-presidential	12	14
Moldova	3.9	Not a member	\$2,233.80	Partly Free	Parliamentary	7	11
Macedonia (FYR)	3.9	Candidate	\$5,455.60	Not Free	Parliamentary	7	10
Serbia	3.9	Candidate	\$6,152.90	Partly Free	Parliamentary	10	13
Albania	3.8*	Candidate	\$4,619.2	Partly Free	Parliamentary	9	13
Russia	3.7	Not a member	\$12,735.90	Not Free	Semi-presidential	2	3
Bosnia	3.5	Not a member	\$4,805.20	Partly Free	Parliamentary	8	10
Czech Republic	3.5	Member	\$19,553.90	Free	Parliamentary	14	15
Slovenia	3.5	Member	\$23,962.60	Free	Parliamentary	14	16
Belarus	3.4	Not a member	\$8,040	Not Free	Presidential	2	3
Poland	3.3	Member	\$14,422.80	Free	Parliamentary	13	16
Latvia	3.2	Member	\$16,037.80	Free	Parliamentary	12	14
Hungary	2.9	Member	\$13,902.70	Partly Free	Parliamentary	10	15

\* Note that Albania's judicial corruption index score was taken Transparency International's 2007 Global Corruption Barometer index, titled "Report on the Transparency International Global Corruption Barometer 2007." Transparency International. Berlin, Germany: 1-25.

\* All other judicial corruption values come from Transparency International's 2011 Global Corruption Barometer, <http://www.transparency.org/gcb201011/results>, last accessed 19.03.17.

\* Note that Montenegro, Slovakia, and Estonia are not accounted for on this table because there is no TI score available for these countries.

GDP/Capita, Rule of Law, and Political Pluralism and Participation values were obtained from the Freedom House Index's 2016 Freedom in the World Report. <https://freedomhouse.org/report/freedom-world-2016/methodology>, last accessed 19.03.17.

Press Freedom values were obtained from Freedom House Index's 2016 Freedom of the Press Report <https://freedomhouse.org/report/freedom-press/freedom-press-2016>, last accessed 19.03.17.

Government system values were obtained from the CIA World Factbook 2017, under the section titled “Government”, <https://www.cia.gov/library/publications/the-world-factbook/>, last accessed 11.04.17  
 Values for EU membership status were obtained from the European Parliament’s website, under “Countries”, last accessed 27.03.17, at [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en)

**Table 3: Average of comparative values for CEE EU and non-EU member countries**

<b>Countries</b>	<b>Perceived Levels of Judicial Corruption</b>	<b>GDP/Capita</b>	<b>Rule of Law</b>	<b>Political Pluralism and Participation</b>
EU Member	3.64	\$15,060.17	12.11	15
Non-EU Members	3.84	\$5,890.64	6.33	9.22
Candidate Countries	3.87	\$5,408.93	6.0	13

- An Ordinary Least Squares (OLS) regression was ran on the data presented above. Below are the findings:
  - An OLS regression with candidate countries as the reference category showed there was no statistical significance in average judicial corruption scores between candidate and EU member countries. There was also no statistically significant difference between candidate and non-EU member counties.
  - Another OLS regression with non-EU members as the reference category revealed that there was no statistical difference in average judicial corruption levels between non-EU member countries and candidate countries. There was also no statistically significant difference between non-EU members and EU member countries.

*All values were taken from Table 1 and split between EU, Candidate, and non-EU member countries. The original data sets came from the following sources:*

*\* Note that Albania’s judicial corruption index score was taken Transparency International’s 2007 Global Corruption Barometer index, titled “Report on the Transparency International Global Corruption Barometer 2007.” Transparency International. Berlin, Germany: 1-2, last accessed 19.03.17.*

*\* All other judicial corruption values come from Transparency International’s 2011 Global Corruption Barometer, <http://www.transparency.org/gcb201011/results>, last accessed 19.03.17.*

*\* Note that Montenegro, Slovakia, and Estonia are not accounted for on this table because there is no TI score available for these countries.*

*GDP/Capita, Rule of Law, and Political Pluralism and Participation values were obtained from the Freedom House Index’s 2016 Freedom in the World Report. <https://freedomhouse.org/report/freedom-world-2016/methodology>, last accessed 19.03.17.*

**Table 4: Average Comparative Scores for CEE Region**

<b>Variable</b>	<b>Average Regional Score</b>
Perceived Levels of Judicial Corruption	3.74
GDP/Capita	\$10,745.09
Rule of Law	9.22
Political Pluralism and Participation	12.11

\* Note that Albania's judicial corruption index score was taken Transparency International's 2007 Global Corruption Barometer index, titled "Report on the Transparency International Global Corruption Barometer 2007." Transparency International. Berlin, Germany: 1-2, last accessed 19.03.17.

\* All other judicial corruption values come from Transparency International's 2011 Global Corruption Barometer, <http://www.transparency.org/gcb201011/results>, last accessed 19.03.17.

\* Note that Montenegro, Slovakia, and Estonia are not accounted for on this table because there is no TI score available for these countries.

GDP/Capita, Rule of Law, and Political Pluralism and Participation values were obtained from the Freedom House Index's 2016 Freedom in the World Report. <https://freedomhouse.org/report/freedom-world-2016/methodology>, last accessed 19.03.17.



**Table 5: Overview of Albanian Judiciary**

Court	Duties	Members	Appointment Process
<b>High Court (Supreme Court)</b>	<ul style="list-style-type: none"> <li>• Highest court in Albania</li> <li>• Rules on charges brought against the President, Prime Minister, MP's, and Constitutional Court judges</li> <li>• Reviews and oversees implementation of law by lower courts</li> </ul>	<ul style="list-style-type: none"> <li>• 17 members, hold 9 year terms with no possibility of re-election</li> <li>• The president of the body is selected from within the court's ranks</li> </ul>	<ul style="list-style-type: none"> <li>• Appointed by the President with a simple majority approval from Parliament</li> <li>• The President of the court is appointed by the President with consent from Parliament</li> </ul>
<b>Constitutional Court</b>	<ul style="list-style-type: none"> <li>• Reviews the constitutionality of laws, acts, and referendum results</li> <li>• Oversees disputes between branches of government</li> <li>• Rules on the removal of the President from office</li> </ul>	<ul style="list-style-type: none"> <li>• 9 members, appointed for 9 year terms with no possibility of re-election</li> </ul>	<ul style="list-style-type: none"> <li>• Appointed by the President of the Republic with a simple majority approval from Parliament</li> </ul>
<b>High Council of Justice</b>	<ul style="list-style-type: none"> <li>• Oversees first and second instance courts</li> <li>• Evaluates, promotes, appoints, and transfers judges</li> </ul>	<ul style="list-style-type: none"> <li>• 15 members, including the President of the Republic (Chair), the Chief Justice of the Supreme Court, the Minister of Justice</li> <li>• Three members are chosen by parliament and the other nine are chosen by the National Judicial Conference (NJC)</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament appoints three members and the NJC selects nine</li> <li>• The President of the Republic selects the Deputy of the HCJ</li> </ul>

*\*This table does not reflect changes made in the most recent judicial reform package passed in July 2016*

*\*\*All information for the High Council of Justice was obtained from EURALIUS's document, "High Council of Justice, Law", passed in 2001 and last checked in 2016, last accessed on 18.03.17 at <http://www.euralius.eu/index.php/en/library/albanian-legislation/send/16-high-council-of-justice/64-law-on-high-council-of-justice-en>.*

*\*\* All information for the Constitutional Court was obtained from the Constitutional Court of the Republic of Albania's website, last accessed 16.03.17 at [http://www.gjk.gov.al/web/Authorities\\_175\\_2.php](http://www.gjk.gov.al/web/Authorities_175_2.php).*

*\*\* All information for the High Court (Supreme Court) was obtained from the Supreme Court of the Republic of Albania's website, last accessed 16.03.17, at [http://www.gjykataelarte.gov.al/web/The\\_High\\_Court\\_1\\_2.php](http://www.gjykataelarte.gov.al/web/The_High_Court_1_2.php)*

**Table 6: Final Results**

<b>Country</b>	<b>H1</b>	<b>H2</b>	<b>H3</b>	<b>H4</b>
<i>Albania</i>	Supported	Fail to support	Supported	Supported
<i>Romania</i>	Supported	Fail to support	Supported	Supported

**H1:** Countries with high levels of destabilizing political competition will have higher levels of judicial corruption.

**H2:** Countries with parliamentary systems will have lower levels of judicial corruption.

**H3:** European Union (EU) member and candidate countries will have lower levels of judicial corruption.

**H4:** Countries with low levels of media freedom will have higher levels of judicial corruption.

**Table 7: Effect of EU Membership and Candidate Status (2000 – Present) on Judicial Corruption Levels**

<b>Country</b>	<b>2000-2004</b>	<b>2004-2008</b>	<b>2008-2012</b>	<b>2012 - Present</b>
Albania	Stagnant	Slight decrease	Slight decrease until 2010, and then substantial decrease after 2010 with first rejection of candidacy status	Decrease
Romania	Stagnant	Decrease until 2007, and then stagnates after accession	Stagnant	Stagnant

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#### **Chapter 4: Romania Case Study**

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## Chapter 5: Findings and Comparisons

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## Conclusion

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