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## **The Rule of Law in Romania and Moldova: An Institutional Explanation of Development**

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### **Citation**

Niculescu, B. F. (2021). *The Rule of Law in Romania and Moldova: An Institutional Explanation of Development*.

Version: Not Applicable (or Unknown)

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**Note:** To cite this publication please use the final published version (if applicable).

Bachelor Thesis

The Rule of Law in Romania and Moldova:  
An Institutionalist Explanation of Development



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BSc International Relations and Organisations

Bachelor Project: Institutions, History and Development (6443HBP14)

Supervisor: Dr. Frank de Zwart

Word count: 7925

Date of submission: 21 May 2021

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## **Introduction**

Romania and Moldova are two Eastern European neighbouring countries that share a common past and culture. In 1918, the two regions even became part of the same country named Great Romania (Heintz, 2005, p. 3). However, in 1949 it fell under Soviet rule and was divided into two separate countries (Heintz, 2005, p. 4). In 1989 the Soviet Union collapsed, and both countries found themselves looking hopeful towards a better future.

Thirty-two years later, Romanian and Moldavian citizens live different types of lives, as the two countries have developed distinctively. Romanian citizens are living in a high-income country, with a 12.902 USD GDP per capita (The World Bank, 2020). Meanwhile, Moldavian citizens live in a middle-lower-income country, with a 3.395 USD GDP per capita. In the overall Prosperity Index (The Legatum Institute, 2020), Romania ranked 47, while Moldova ranked 80.

These development differences can also be observed in the emigration trends of Moldavian citizens to Romania. Since 1989 the population of Moldova has declined by 45% (Judah, 2020). Out of its 2 million inhabitants, approximately half a million have gotten Romanian passports and have moved to Romania or other Western countries (Judah, 2020). It is estimated that 1 in 3 Moldavian citizens also hold Romanian citizenship (Vonk, n.d.). The main reason why people want to leave Moldova is its corruption-filled institution and poverty (Necsutu, 2018).

So, the two countries had a very close relationship during the centuries, sharing a common culture and history. Still, today they seem to have developed very differently despite their shared background. Hence the research question is “How can the difference in development between Romania and Moldova be explained?”.

Three widely accepted theories for explaining development are: the geography, the culture, and the ignorance hypothesis. The geography hypothesis argues that development is determined by factors such as the physical location of a state and the climate (Lorenz, Hemmer & Ahlfeld, 2005, p.4). It claims that countries in tropical climates will be poorer than those in a temperate one because of the tropical diseases and infertility of the soil (Lorenz, Hemmer & Ahlfeld, 2005, p.5). However, Romania and Moldova have similar geographies with a continental

climate (European Environmental Agency, 2012). Hence, it seems unlikely that geography could explain the difference between the two in terms of development.

The culture hypothesis claims that a country's culture can determine its development. According to this theory, some societies have specific cultural values that make them more hard-working, leading to development (Acemoglu & Robinson, 2012, p.57). For example, it is believed that Western Protestant countries have achieved development due to their religion, which encouraged them to work hard (Idem). However, Romania and Moldova have a similar culture, as both are Orthodox Eastern European countries. The culture hypothesis can hardly explain development in this case, as they are very similar.

The ignorance hypothesis claims that some countries just don't know how to achieve development (Acemoglu & Robinson, 2012, p.63). However, Romania and Moldova have both been supported by the European Union (EU) in their reform programmes but still achieved different outcomes.

Finally, the institutional hypothesis proposed by Acemoglu & Robinson (2012) (A&R) argues that it is the political and economic institutions of a country that determine development. In countries with inclusive institutions, political power is constrained and shared among many different actors (Acemoglu & Robinson, 2012, p. 89). Moreover, the rule of law and property rights are strong, facilitating economic activities and growth (Acemoglu & Robinson, 2012, pp. 74-75). The rule of law especially plays a central role in stimulating development. It keeps checks and balances on the political elite's power and incentivizes citizens to engage in economic activities by safeguarding their assets (Acemoglu & Robinson, 2012, p. 43, 307).

In contrast, in countries with extractive political institutions, the political elites are not interested in a strong rule of law as that would bring about a broader and fairer allocation of resources (Acemoglu & Robinson, 2012, pp. 306-307). Instead, the elite tries to avoid following the law to accumulate most of the wealth and political power (Idem). This phenomenon is known as corruption, and it negatively affects the rule of law and, consequently, the country's economic development. More precisely, Transparency International (n.d.) defines corruption as abusing power for one's private interest.

This hypothesis can be applied to Romania and Moldova, as the two have had different institutional developments since 1989. Romania joined the EU in 2007, but it lagged behind the EU standards in quality of judicial institutions (European Commission, n.d.). One of the main pressing issues of Romania was its weak judiciary and its inability to tackle the high levels of institutional corruption (European Commission, 2000, pp. 17-18). Hence, it had to undergo extensive institutional reforms to catch up with other EU countries. The judiciary system had transformed drastically since Romania has started its ascension journey. If in the early 2000s it was understaffed and controlled by the political elites, by 2020, it has gained its independence from the political institutions and has uncovered many high-level corruption cases within the Romanian institutions, as the following analysis will show.

In contrast, Moldova did not join the EU, even if it had closely collaborated with it. Because Moldova was not legally bound to follow EU's reform recommendations, its institutional development was not similar to Romania's. Recent events have shown that the judiciary institutions might still be under the influence of the political ones. In 2019 a politically biased decision by the Moldavian judiciary triggered a constitutional crisis, affecting all aspects of the Moldavian society, including the economy (European Commission, 2019, p. 5). Hence, as the institutional explanation proves to be relevant to the cases of Romania and Moldova, the hypothesis is:

$H_1$ : The rule of law institution affects development in Romania and Moldova.

To answer the research question and test the hypothesis, the following chapters will analyse the different ways in which the institution of the rule of law progressed in the two countries and its consequences on development.

## **Chapter 1: Theoretical framework**

### **Acemoglu & Robinson's institutionalist framework**

According to A&R (2012), long-term development can only be achieved through inclusive political and economic institutions. By inclusive political institutions, the authors mean institutions where the political power is constrained and distributed among a broad coalition (Acemoglu & Robinson, 2012, p. 89). Pluralistic political institutions tend to adopt inclusive economic institutions (Acemoglu & Robinson, 2012, p. 309). A&R (2012, p. 74) define inclusive economic institutions as institutions that facilitate the engagement in economic activities of a large percentage of the population and allow individuals to freely choose their economic activities based on their talents and skills. Increase and diverse economic activity will result in high levels of economic growth and development.

To have an inclusive economy, there needs to be a strong and unbiased rule of law (Acemoglu & Robinson, 2012, p. 74). The strength of the rule of law in a country determines economic development through the following mechanism. A strong rule of law means secure property rights and strong contract enforcement along with equal treatment before the law. These offer incentives for individuals to engage in all kinds of economic activities such as trade, investing, or starting businesses, eventually leading to economic growth (Haggard, MacIntyre & Tiede, 2008, p. 207). It also assures a fair distribution of resources because the elite cannot exploit all of the resources in their favour (Acemoglu & Robinson, 2012, p. 309). Because resources are fairly distributed, it is possible for development to occur in society and for people to benefit from public goods compared to when the elite just keeps these resources in their own pockets (Acemoglu & Robinson, 2012, p. 313). Finally, the incentives offered by a strong rule of law also encourage creative destruction. Public services, such as education, equip individuals with the necessary skills and knowledge, while secured property rights incentivize them to create new technology to bring them profits (Acemoglu & Robinson, 2012, p. 78). New technology can lead to more and faster production of goods and consequently more trade and investment, leading to economic growth (Acemoglu & Robinson, 2012, pp. 77-78).

### **Criticism of the institutionalist framework**

However, many scholars disagree with A&R's framework. The most frequent critique brought to their theory by scholars, such as Jeffrey Sachs (2012), Martin Wolf (2012), or Jared Diamond (2012), is that they are overestimating the role of institutions in development while ignoring

other factors such as geography. Sachs (2012, p. 143) argues that A&R's approach is too narrow and simplistic, as institutions can influence development, but this outcome depends on many other factors. He (Idem) argues that most of the time, the political elites in authoritarian states want economic development. Hence, it is not that some political elites oppose development, but other factors such as geography pose a barrier. Unfavourable geography, such as the lack of rivers or a bad climate, can make it difficult for technology to diffuse and contribute to development (Sachs, 2012, p. 145). Similarly, landlock countries make trade more difficult and time-consuming, making investors look away from these countries. So, a country's geography determines how easy it is to carry out business and consequently determines its attractiveness to foreign investment.

However, A&R (2012) never claimed that geography could not influence development. These factors can have significant effects on development, but ultimately it is the institutions of a state that dictates whether development will take place or not (Idem). A country might have favourable geographic characteristics and an abundance of natural resources. However, if its institutions mismanage these resources for their personal interest, they cannot offer enough incentives to citizens to engage in economic activities (Idem). Consequently, economic development will not take place. The opposite is also true, a country might have few geographic advantages, but with inclusive institutions, the population can be incentivized to invest and innovate.

Moreover, Sachs (2012, p. 150) criticises the limited ability of A&R's framework to predict development. He believes that the real-life use of their theory is very narrow and of little help to economists. He uses the example of the East-Asian tigers, which in the 1980s had extractive institutions and consequently little prospect of achieving economic development (Idem).

A&R (2012) recognize the limited prediction ability of their theory and explain it through institutions' resistance to change and critical junctures. Once the political elite got its hands on the country's resources and accumulated most of the state power, it is difficult to overthrow them. Even if the population manages to, there are few checks and balances on the new elite's power because of pre-existing extractive institutions, such as a weak rule of law (Acemoglu & Robinson, 2012, pp. 361-362). Hence, with a weak rule of law, the new elite might start abusing the state's resources and power, just as the old elite. This is what A&R (2012, p. 111) call the iron law of oligarchy.



So, once certain political institutions are established in a country, they will affect the nature of the economic institutions and, consequently, economic development. All these institutions just reinforce each other through feedback loops. Once a state has extractive institutions, negative feedback loops are created, making it difficult for change to occur. A&R call this the vicious circle (Acemoglu & Robinson, 2012, p. 107). Hence, when a country is in a vicious circle, there are few chances that it will change, and investment becomes risky. However, this circle can be broken through a critical juncture (Acemoglu & Robinson, 2012, p. 407). This is a random, historical event that can change the course of a state from a vicious circle to a virtuous one.

Consequently, A&R (2012) explain that it is hard to predict economic development in general because of the random nature of history. Still, their theory helps identify a specific manner through which economic development could be achieved in case of a critical juncture. Even if this framework cannot help economists make perfect economic predictions, it can give them a sense of what to look out for. The economy domain is a very uncertain one in which, just as A&R (2012) point out, many random factors can play a decisive role. But, in the end, it comes down to what type of circle a country is in and what kind of historical developments it is undergoing, as any could be a critical juncture.

## **Chapter 2: Research Design and Method**

To illustrate the different development of the two country's rule of law, the most similar system design (MSSD) will be used. MSSD is used to study two cases that are similar in all main essential characteristics, except from one significant aspect (Halperin & Heath, 2017, p. 219). In this design, the shared characteristics act as control variables, which allows testing whether the significant difference can explain the variation in the dependent variable (Halperin & Heath, 2017, p. 219). In this case, Romania and Moldova share a similar history, geography, and culture but differ in their rule of law.

One limitation of MSSD is the probability of overlooking other significant factors to the research (Halperin & Heath, 2017, p. 221). Many other possible elements might contribute to the variation in the dependent variable. However, it is impossible to consider all these factors, which results in the possibility of overlooking a significant aspect to one's research. Especially when researching countries, it is challenging to keep all control variables constant, as these are constantly changing. Hence, in this research, a loose application of MSSD will be used. This means that while the two research cases appear to have a similar background, not all of their characteristics and possible control variables are checked to match perfectly (Anckar, 2008, p. 390).

Regarding the chosen method, a historical analysis through process tracing will be conducted. Using documents from the EU dating from 1997 until 2020, the development of the rule of law institution in Romania and Moldova will be traced. This comparative analysis will show how the rule of law can explain the differences in development. It is expected that the rule of law in Moldova is more extractive than that in Romania, causing less development.

The main institution that will be analysed is the rule of law. There is no consensus on the definition of the rule of law, as it is a very broad concept. In this research, North's (1981) definition of the rule of law will be used. He defines the rule of law as the totality of rules, norms, and procedures that constrain "designed to constrain the behaviour of individuals in the interests of maximizing the wealth or utility of principals." (North, 1981 as cited in Charamba, Moore, Ramanujam & Verna, 2012 p. 2). To measure the inclusiveness of the rule of law, indicators such as the levels of corruption, the independence and transparency of the judiciary, and the strength of property rights will be used.

The most well-known development indicators will be used to measure the differences in development between the two counties, namely GDP per capita, education, and health. These indicators will be obtained from international organisations' statistics and report, such as the World Bank and United Nations.

### **Chapter 3: The development of the rule of law in Romania and Moldova**

In this chapter, the evolution of the rule of law in the two countries will be presented. The analysis starts in different years for each country because each started to officially collaborate with the EU at different times. This choice was made because the EU represents a critical juncture for Romania and has played a central role in designing and supporting the development strategies for both countries. Moreover, the EU reports on the two countries represent valuable and detailed data that can help the analysis. So, while this reform process started in 1997 for Romania, when it was preparing for official EU accession negotiations, for Moldova, it started in 2004, when it joined the EU Neighbourhood Policy programme.

#### **The rule of law in Romania**

##### **1997-2000**

During this period, Romania has undergone significant reforms to achieve a minimum democracy standard so it could start serious negotiations with the EU. During these years, the rule of law was weak, and corruption was widespread, undermining the population's trust in the political authorities (European Commission, 1997). However, changes were made in the judiciary system to promote respect for the enforcement of contracts and property rights. For example, special court units were created for social security and labour related cases to facilitate a quicker and more efficient solution (European Commission, 2000, p. 17). Moreover, action was taken against judges that violated property rights, resulting in the dismissal of seventeen judges out of thirty-seven Constitutional Court judges (European Commission, 1998, p.9).

A new unit specialised in tackling corruption was established but had yet to function (European Commission, 2000, p.18). Also, new laws were adopted to protect the economy from monopolies and unrightfully contract awarding (Idem). Despite these small steps, corruption was a widespread phenomenon in that period, with the political bodies still being involved in organizing and controlling the judiciary (Idem).

## **2000-2005**

As progress had been made in reforming state institutions, the EU had officially started bilateral intergovernmental negotiations with Romania (Încalțărău & Maha,2010, p.75). Despite significant progress in maximising the efficiency of the judiciary, further reform was needed to guarantee the independence of the rule of law and strengthen its capacity (European Commission, 2001, p.20).

Corruption legislation had advanced. A law that established a procedure for public procurement was adopted, and it introduced the right to appeal how a public contract was awarded (European Commission, 2001, p. 22). These changes made business more transparent, barring the political elites from using public money in their favour. If before they could award themselves these contracts, now a strict procedure exists, and other actors can appeal the decision. The new legislation forced the political elites to publicly disclose their assets (European Commission, 2013, p.21). This law made it difficult for the political elites to use all of the state resources for themselves, as they have to explain to the voters how they acquired their properties. Moreover, a law on "conflict of interests" had been adopted, barring individuals to occupy certain public and political positions if their personal interests and assets influence their decisions while serving in a political office (Idem). Also, to stop politicians from serving their interests or the interests of those who fund them, a law was adopted, making it compulsory to reveal major political donors (Idem).

Overall, much progress was made on corruption legislation during this period, as it reached the EU standard (European Commission, 2004, p.22). However, the legislation was, in theory, comprehensive, but it was not enforced properly (Idem). The political elites still had a significant influence over the judiciary and its verdicts (European Commission, 2004, p.20) (European Commission, 2002, p.24) (European Commission, 2003, p. 18). The central unit fighting corruption was understaffed and under the influence of the political elites. Hence, the very own institutions that were supposed to combat corruption were affected by it.

## **2005-2007**

In 2005 the Accession Treaty was signed between the EU and Romania (European Commission, 2005, p. 6). In 2005 the government designed a comprehensive Action Plan that

was supposed to reform the justice system until 2007 following EU standards (European Commission, 2005, p. 10).

Essential legislative changes were made when it comes to the procedure of appointing prosecutors and judiciary managers (Idem). These functions were no longer appointed by the political class, namely the Ministry of Justice, but by the courts themselves through competition. This represented a progressive step in the fight against corruption, as it allows the judiciary to gain independence from the political class. Additionally, judges started to be randomly appointed to cases, reducing the chances of being under political pressure (European Commission, 2005, p. 11).

In 2006 the former body against corruption, PNA, was transformed into the National Anti-Corruption Directorate (DNA) (Commission of the European Communities, 2006, p. 7). Finally, the DNA stopped investigating small, petty corruption cases, instead going for high-profile ones (Idem). This pressures the political elites not to abuse their power and engage in corruptive behaviour.

Overall, during this period, necessary steps were made to strengthen the rule of law and fight corruption. The Romanian political authorities also demonstrated their commitment to reforming the rule of law by taking all the necessary legislative changes (Commission of the European Communities, 2007, p. 5). Still, there were challenges in actually implementing these changes in Romanian institutions (Idem). The DNA has supported the anti-corruption fight by showing high efficiency. It had investigated and prosecuted high-level cases, discouraging the narrow share of power of the political elite and abusive use of resources.

## **2007-2019**

In 2007 Romania joined the EU and was placed under the Cooperation and Verification Mechanism (CVM) to ensure that reform and progress are happening in the justice system until it reaches the EU standard (European Commission, 2017, p. 2). The purpose of the CVM is to closely monitor and assist Romania in its judiciary reform (Idem).

This represents a period with mixt results for the Romanian rule of law. On one hand, much progress was made regarding legislative and institutional judiciary reform. The judicial system

has become transparent and independent. The fight against corruption also had significant results, with petty and high-level corruption cases being prosecuted. On the other hand, during the period 2017-2019, the political elites attempted to modify the rule of law and weaken it in their favour. Finally, their attempt failed, but it did produce a period of political, economic, and judiciary uncertainty.

The 2012 EU's report on Romania highlights Romania's significant progress in tackling corruption since 2007. The DNA showed itself impartial and ready to tackle even the most high-ranking politicians who engaged in corruption (The European Commission, 2012, p. 11). This anti-corruption progress plays a pivotal role in developing Romania's inclusive political and economic institutions. By sanctioning the political elite, it diminishes their apparently absolute power, and it shows that no one is above the law. This instead gives the population and external investors' confidence that the political elite will not be able to subtract all the resources for themselves. The fact that politicians from the ruling party were also investigated is an important proof of impartiality and transparency from the judicial bodies of the state, strengthening the rule of law (European Commission, 2012, p. 12).

A big issue pre-ascension was the subjectivity of judges as a result of political control over the judiciary. However, recent developments have shown the judiciary was acting independently from the political class. A prolific example illustrating this is the prosecution of a former prime-minister, Adrian Năstase, for taking bribe (European Commission, 2012, p. 13).

The anti-corruption fight of the DNA also provoked a reaction within the population. The civil society highly trusted and supported the DNA; public pressure played a decisive role in Adrian Năstase's resignation (European Commission, 2016, p. 10).

However, in 2017 the government adopted three controversial urgency ordinances that would negatively affect the rule of law in Romania. These ordinances would decriminalize certain corruption acts, such as abuse of office (European Commission, 2017, p. 2). These laws represent a loss of judiciary independence and a loss of trust from the civil society in the rule of law (European Commission, 2018, p. 3). These judiciary changes sparked mass protests in Romania, the biggest mass demonstrations in Romania since the Revolution of 1989 (Gotev, 2017). These legislative changes were met with the resistance of civil society and that of the EU, which threatened to take legal sanctions (Strupczewski, 2019). However, this Social

Democrat government fell from power following a no-confidence vote in Parliament (BBC, 2019). In 2020 a new centre-right government coalition was formed (Euronews, 2020).

## **2020-2021**

The new governmental coalition reaffirmed its dedication to judiciary reformation. It committed to reversing the harmful changes done during the 2017-2019 former government and continue to fight corruption and strengthen the rule of law (European Commission, 2020, p. 1). In 2021, the new government officially reversed the harmful legislative changes (Barberá, 2021). Moreover, in 2021, the new government is working with the European Commission to fulfil the last EU recommendations and lift the CVM by the end of the year (Marica, 2021).

The 2017-2019 events cast doubt over the efficiency and durability of the anti-corruption reforms. Still, Romania enjoys a comprehensive anti-corruption strategy involving many national and international actors (European Commission, 2020, p. 1). Moreover, the new government has committed to preventing and fighting corruption through the National Anti-Corruption Strategy (Idem).

## **The rule of law in Moldova**

### **2004-2008**

The EU reports on the rule of law in Moldova started in 2004, in the context of the European Neighbourhood Policy. During this period, Moldova's judiciary system lacked resources, transparency, and independence from the political class (Commission of the European of Communities, 2004). However, the political institutions committed to implementing the judicial reforms proposed by the EU. The Ministry of Justice has signed an Action Plan on the issue of judicial reform. Within this programme, Moldova had adopted a new Criminal and Civil Code. (Commission of the European of Communities, 2004, p. 7).

Corruption was one of the most pressing issues hindering Moldova's development. The political elites at that time committed to fighting corruption within Moldova's institutions (Commission of the European of Communities, 2006, p. 3). The Centre for Fight against Economic Crime and Corruption was the main body responsible for undertaking preventive and concrete



measures (Commission of the European of Communities, 2006, p. 4). In 2005 a new anti-corruption national strategy was adopted (Idem). However, further action was needed regarding its implementation (Idem).

## **2008-2014**

During this period, progress had been made on legislative reform. However, effective implementation remained a challenge. This is particularly true in the areas of judicial reform and the fight against corruption, as well as ensuring media freedom and improving the business and investment climate. More effort was needed to ensure the independence of judicial and anti-corruption bodies from the political institutions.

Similarly, more reform was needed to ensure that the Centre for Combating Corruption and Economic Crime could act independently from the political institutions (Commission of the European of Communities, 2008, p. 4). Otherwise, it could not complete its role in fighting corruption and assuring that the political elites don't abuse their power.

Legislation designed to improve the business climate had also been adopted. A new institution was created, the National Agency for the Protection of Competition, progressing the policy and practices in economic competition (Commission of the European of Communities, 2008, p. 11). Such an institution provides a check and balance on the overall business climate and the political elite. New legislation was adopted on the protection of intellectual property rights (Idem). This legislation is beneficial to the business climate, as it promotes creative destruction. It allows for innovation and progress to appear in various industries. However, in practice, the legislation on property rights was not implemented at a satisfactory level (Idem).

## **2014-2018**

In 2014 the rule of law reform in Moldova had stalled. Any possible reform to the justice system was blocked because of the power that the political elites had over the judiciary (Commission of the European of Communities, 2014, p. 6). The members of the then governing party had their own interests that would have been affected by an inclusive rule of law (Idem). The political elite was abusing their power and the state resources for their own interests, detrimental

to the populations. Corruption in the judiciary and unfair verdicts had worsened the business climate, discouraging the population from investing, as there was no fair competition (Idem). The independence of the judiciary was questioned at the beginning of 2014 when the decision to withdraw the broadcasting license of the NIT channel was upheld (Idem). The NIT is a channel associated with the ideas and values of the then opposition party (Idem). This indicates that the judiciary was not impartial but was under the influence of the political elites, prohibiting the opposition the right to speak.

In 2015 progress had been made on judicial reform. A new procedure of appointing, promoting, and assessing judges transparently and fairly had been adopted (Commission of the European of Communities, 2015, p. 6). However, corruption within the judiciary was still a widespread phenomenon (Idem). Another factor that harmed the anti-corruption fight was the low penalties given in corruption cases (Commission of the European of Communities, 2015, p. 7). It made the benefits of engaging in corrupt activities outweigh the consequences of being caught.

When it comes to the power of civil society in society, it was still relatively weak (Idem). Civil society organisations had started to be integrated more in the decision-making process, but they were still affected by low civic participation and public trust levels (Idem). It negatively impacts the business climate, as trade unions rarely impact the decision-making mechanism or the outcomes (Idem).

## **2018-2021**

In 2018, corruption was still a widespread phenomenon (European Commission, 2018, p. 1). The justice system was weak due to its dependence on the political class and the slow anti-corruption fight. The development of the rule of law until 2018 was so slow and inefficient that the EU decided to cut its financial aid to Moldova (European Commission, 2019, p. 1).

Firstly, in June 2018, the mayoral elections in Chisinau were won by the opposition leader Andrei Năstase (Idem). However, the results were invalidated by the Constitutional Court (Idem). This raised serious concerns about the independence of the judiciary. It shows that the political elite controls the judiciary to such an extent that it will rule in favour of the political elite, even if it is against the people's will. The Court's decision protects the existing extractive political elite, not letting anyone else get power or access to resources.

Secondly, in 2014 a major banking fraud was revealed in Moldova, but until 2018 only a few people from the private sector were prosecuted for their part in this fraud (Idem). The banking fraud cost Moldavian citizens 13% of the country's GDP, which had never been recovered (Idem). It is an accurate example of how the political elite can abuse its power in the absence of an inclusive rule of law. Instead of that money being used for society's development, it was transferred into the private pockets of the political elite.

Thirdly, enormous progress was still needed in the justice sector to get a transparent and independent judicial process (Idem). The judges on many legal cases are appointed in a non-transparent manner (Idem).

Another example of the political elite's power over the judiciary in Moldova, affecting foreign citizens and possible investors, is the Turkish teachers' deportation. In 2018 some Turkish citizens working as teachers in Moldova had been deported to Turkey in a manner that violates basic human rights, as the European Human Rights Court has ruled (Nordic Monitor, 2020).

In 2018 improvements had been made to legislation on intellectual property and public procurement (European Commission, 2018, p. 12). The Parliament had created a Public Procurement review body to ensure a transparent acquisition procedure by the state (Idem). However, the head of this agency had been appointed in a non-transparent and conflicting manner, casting doubt on the agency's efficiency (Idem).

Overall, property rights were still weakly enforced, and there was no established competent institution to deal with this area (European Commission, 2019, p. 16). This directly impacts the business climate and discourages both external and internal investment.

In 2019, after parliamentary elections, a new government was voted by the Parliament (European Commission, 2019, p. 1). However, the old government refused to recognize the new one and transfer their political powers (Idem). The old government was supported by the Constitutional Court, leading to a political impasse (Idem). The Venice Commission argued that the Constitutional Court's ruling created a political crisis that brought much instability to the country and was a ruling based on political interests and not an unbiased judicial ruling (European Commission, 2019, p. 7). This episode clearly hurt Moldova's business climate as it

showed that the country was politically unstable, so any investment comes with a risk. It also highlighted the existing high-level corruption in the Moldavian judicial and political bodies. The new Parliament and Government have expressed the wish to build a stronger rule of law through reforms and to tackle corruption in collaboration with the EU (European Commission, 2019). As a result, the EU has started again to offer financial aid to Moldova to reform its institutions (Idem). This seems a promising new start; still, the enforcement phase is to come in the following years.

To conclude, this was a tumultuous period for the rule of law in Moldova. Many political and judicial events have shown that reform was slow, and the political elites still control the judicial system. The new 2019 elections have resulted in a changing political elite, which committed to reform the judicial institutions.

## **Chapter 4: Comparative analysis of Romania and Moldova's rule of law trajectories**

When analysing the rule of law developments of the two countries, it can be observed that after the fall of communism, both countries had similar judicial systems and corruption levels. Both countries had a non-transparent and politically-dependent judiciary system. Corruption was also widely spread in both countries' institutions. These conditions led to an unfavourable business climate and low levels of development. Both countries were caught in a vicious circle with extractive political and economic institutions enforcing each other and leading to economic decline. As a result of the poor development, both countries' political classes committed to reforming the judiciary system and fighting corruption.

However, the above analysis shows that Romania and Moldova had different trajectories when it comes to reforming. These differences can be explained through a critical juncture that took place in 2007 when Romania joined the EU. Joining the EU meant that Romania had to accelerate its reform process and anti-corruption fight. It was also placed under the CVM, which forced its political elites to commit to strengthening the rule of law. On the other hand, Moldova did not join the EU and was not placed under the CVM. So, its political elites were able to stop a significant reform of the justice system and continue to grip all of the power and resources to themselves.

Data also support the results of the analysis. The World Bank estimates that in 1996, Romania had a score of -0.02 on the rule of law, while Moldova had a score of -0.12 (The World Bank, n.d). In 2019, the difference between the scores of the two countries was more significant. Romania scores 0.36, while Moldova has a score of -0.37 (The World Bank, n.d.). Similarly, according to the Corruption Perception Index, in 2000, Romania ranked 68 globally, with a score of 2.9, and Moldova, 74, with a score of 2.6 (Transparency International, 2000). In 2020 this difference was much more significant, Romania ranked 69 with a score of 44, and Moldova ranked 115, with a score of 35 (Transparency International, 2020).

The different trajectories of the two rule of law systems also illustrate how the negative or positive institutional feedback loops within the vicious and virtuous circles work in practice and how it affects the inclusiveness of the political institutions.

So, over the last two decades, the Romanian judiciary system has gained its independence from the political elite and has been fighting corruption. Hundreds of high-level officials have been investigated and prosecuted in Romania over corruption cases, showing that the political elite cannot disobey the rule of law and abuse their power. Perhaps the best example is that of the former leader of the Social Democrats party, Liviu Dragnea, who was investigated for corruption. He was one of the key political actors who fought to adopt the controversial 2017 judicial changes (BBC, 2019). Many believe that the controversial justice reforms were designed to help him get away, as abuse of power would no longer be a criminal offense (Romania Insider, 2019). However, these changes triggered the reaction of the EU, which threatened to take legal action against Romania (Gurzu, 2019). It also triggered a vast response from civil society (Gotev, 2017). In the end, Liviu Dragnea was prosecuted, sentenced to prison, and the laws were reversed (Idem). Hence, an inclusive and effective rule of law institution can protect political institutions against threats to their inclusivity, perpetuating a virtuous circle.

On the other hand, the reports suggest that in Moldova, the judicial system has constantly been under the pressure of the political elite. Hence, if in Romania the institutions managed to punish many politicians that tried to seize power for themselves, in Moldova, the system was not as successful. The best illustration of this is the comparison between the cases of Liviu Dragnea and that of Shor and the banking fraud. Many claim that he was one of the primary beneficiaries of the banking fraud (Ernst, 2021). However, he escaped the country during the appeal period, never serving his sentence or giving back the stolen assets (Idem). He was also allowed to serve in a political office while being investigated for fraud. Hence, in Moldova, the rule of law is an extractive institution that failed to protect the inclusiveness of the political institutions, contributing to the vicious circle.

Finally, it is important to note two essential factors that led to the different justice and development outcomes between the two countries: the EU and the civil society. The analysis showed that the political elite had tried to seize power and place themselves above the law in both cases. However, in Romania, the plans of the political elite have failed because the civil society has fought the abuse of power through protests and voting.

The EU was another decisive factor in stopping the harmful legislative changes. It supported the civil society in its fight against corruption. Also, it elaborated reports on the worrying evolution of the rule of law, and it threatened to take legal actions, pressuring the Romanian

political elites (Gurzu, 2019). These two factors were lacking in the case of Moldova, as the civil society was weak and the EU had no direct influence on the Moldavian political elites.

## **Chapter 5: Effects of the different rule of law trajectories on development**

The different evolutions of the rule of law also resulted in different development outcomes. Firstly, all of the legislative changes made in Romania since joining the EU, coupled with its resistance to democratic backsliding and the independence that the judiciary has shown in high-profile political cases, make it a safer place for business and investments. In contrast, in Moldova, the political elites could abuse their power and monopolise the state's resources and market, making it difficult for a new business to take off. This might also mean that a successful business will require political support, which comes at an extra cost and might require engaging in corruptive behaviour such as bribery. Moreover, as the political elite greatly influences the judiciary in Moldova, business owners and investors might not be able to get justice in a fair trial against the political elite. Hence, a weaker rule of law and higher levels of corruption result in potentially higher risks and investment costs, discouraging potential investors.

The findings of the above analysis that the strength of the rule of law in the two countries differs is supported by statistical data. According to the Index of Economic Freedom, the judicial efficiency of Romania has a score of 63, making it moderately free, while Moldova has a score of 29.9, being considered repressed (The Heritage Foundation, 2021). Also, when it comes to enforcing contracts, Romania has a score of 72.2, ranking 19, while Moldova has a score of 63.6, ranking 62 (Idem). The effects of the different levels of judicial efficiency can be observed in the business freedom statistics. While Romania has a score of 66.2, classifying close to moderately free, Moldova has a score of 59.7, classified as mostly unfree (Idem).

Similarly, the investment freedom score for Romania is 70, which classifies as moderately free, while the score of Moldova is 55, classifying between repressed and mostly unfree (Idem). These statistics are reflected in the different levels of foreign direct investment flow. In 2019, Romania had a foreign direct investment flow of 7.36 billion dollars, while Moldova had a foreign direct investment flow of 501 million dollars (The World Bank, n.d.).

Secondly, a weak rule of law results in weak property rights, negatively affecting development. If property rights are not properly secured, individuals will fear investing, starting a business, or acquiring property, as they might easily lose their money. Moreover, innovation can bring economic growth as it might increase production efficiency and overall consumption. Weak property rights hamper individuals from fully benefiting from their innovations. Hence, there are low incentives for the population to spend resources on creating new technologies, which



hurts the business climate. In the Global Competitiveness Report, in the category property rights, Romania had a score of 59.6, ranking 54 in the world, while Moldova had a score of 56.2, ranking 61 (Schwab, 2019, p. 391, p. 479). The effects of these scores on innovation can be noticed in the Global Innovation Index, where Romania ranked 46, while Moldova ranked 59 on the innovation category.

Thirdly, the stronger rule of law and the more intense, high-level anti-corruption fight of the DNA and the stronger civil society make the Romanian political elite more cautious when it comes to abusing their power. They know that there is a high chance of them getting caught and being prosecuted. Moreover, if they get caught while engaging in acts of corruption, the civil society will protest or vote them out of office. Hence, the benefits of engaging in corruption might not outweigh the risks in the case of Romania. In contrast, in Moldova, the political elite can afford to abuse power and monopolize state resources, as they have control over the judiciary and a weaker civil society. Hence, as the banking fraud has demonstrated, the Moldavian political elite abusively uses state resources for their own interests instead of using them to provide good quality public services. So, while the political elites get richer and more powerful, the population suffers from a lack of good public services and cannot fulfil their full potential. The fact that the Moldavian political elite is more likely to get away with corruption is also supported by statistical data. Romania ranked 38 in the world at the category institutions' checks and balances with a score of 57.2 Moldova ranked 95 with a score of 43.9 (Schwab, 2019, p. 391, p.479).

To conclude, the strength of the rule of law and the levels of corruption directly affect the economic growth and development of the state. In Romania, the stronger civil society and the EU put pressure on the political elites to heavily reform the judicial system and fight corruption. These reforms led to a more inclusive rule of law and, consequently, a better business climate. These factors allowed Romania to develop better than Moldova, which was slower in reforming its judiciary system.

The development differences between the two countries can be seen when looking at statistics on the main development indicators: population health, education, and income. Regarding health, in Romania, in 2020, the average life expectancy is 76 years, while in Moldova, it is 71.9 (United Nations Development Programme, n.d.). Also, infant mortality rates in Romania are 7.3, while in Moldova, these are 15.8 (Idem). Regarding education, in Romania, the

expected years of schooling are 14.3, while in Moldova, these are 11.5 (Idem). Finally, in Romania, the GDP per capita is 29,497 dollars, while in Moldova, it is 13,664 dollars (Idem).

## **Chapter 6: Conclusion**

The above analysis confirms the hypothesis. A country's rule of law institution does affect its development. Having an inclusive rule of law perpetuates a virtuous circle by supporting and safeguarding the inclusiveness of the other institutions and economically incentivizing the population. Hence, it fosters economic growth and development. An extractive rule of law supports a vicious circle, hindering development.

To answer the research question, the development differences between Romania and Moldova can be explained through their institutions. The fact that the political elite was forced by the EU legal arrangements to reform its rule of law led to more inclusive economic institutions. This, in turn, incentivized the population to engage in all kinds of economic activities, stimulating economic growth and development.

In Moldova, the political institutions strengthen an extractive rule of law institution by engaging in corruptive behaviour and influencing the judicial decision in their favour. This was detrimental to economic growth, as the political elites monopolised the state's resources, and opening a business or investing was risky because of the judiciary impartiality and low predictability.

One limitation of this research is the loose application of the MSSD. The above analysis shows the effects of the rule of law on development while also identifying the importance of the EU in this process. However, multiple other variables might have significantly influenced the outcome but cannot be analysed simultaneously due to time and space constraints. For example, factors such as the personality of the political or judiciary leaders might also have significant influence over the inclusiveness of institutions and overall development. Still, despite this limitation, the above analysis does demonstrate that the rule of law institution has a crucial role in explaining development.

From an academic perspective, this comparative analysis adds to the existing literature on development by demonstrating and confirming A&R's institutional approach. It shows that while variables such as geography and culture are kept constant, institutions can explain why some countries are more developed.

Moreover, it adds an international relations dimension to A&R's (2012) framework, as it has demonstrated the importance of international relations for development within the institutionalist framework. The EU does represent a unique case, as other international actors might not hold this significant coercion power over other countries. Still, it showed that in some cases, development could come from external sources, and not just internal ones, as A&R (2012) claim.

From a policy perspective, to encourage development, Romania needs to continue its fight against corruption and to support the judicial institutions in their pursuit of protecting the inclusiveness of the rule of law.

On the other hand, the new Moldavian government needs to seriously support the reformation of the rule of law institution to achieve development. Moreover, it needs to strengthen the civil society. Just as Romania joining the EU turned out to be a critical juncture for its development, so can the election of a new government in Moldova. If the new Moldavian government does not fall into the trap of the iron law of oligarchy, it might start creating inclusive political and economic institutions. This would allow for Moldova to finally break out of the vicious circle. Creating new inclusive institutions will not be easy for the new Moldavian government because of institutional change costs. Still, having an inclusive and the strong rule of law can also contribute to the inclusiveness of political institutions.

Finally, further research is needed on the role of international relations on institutional development. In their framework, A&R (2012) do not elaborate on the international arena's role and effects. Moreover, international organisations might play a central role in forcing or supporting inclusive institutions in a state, consequently bringing development from an external source. Further research is needed to assess precisely how international relations and organisations can affect a state's institutional inclusiveness and development. Perhaps the positive effects of the EU in Romania can be replicated to bring development to other countries.

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