SSOAR

Open Access Repository
www.ssoar.info

The state vs. its citizens: a note on Romania, Europe, and corruption

Barbu, Daniel

Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:
Barbu, D. (2007). The state vs. its citizens: a note on Romania, Europe, and corruption. *Studia Politica: Romanian Political Science Review*, *7*(1), 9-12. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56052-3

Nutzungsbedingungen:
Dieser Text wird unter einer CC BY-NC-ND Lizenz (Namensnennung-Nicht-kommerziell-Keine Bearbeitung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:
https://creativecommons.org/licenses/by-nc-nd/1.0/deed.de

Terms of use:
This document is made available under a CC BY-NC-ND Licence (Attribution-Non Comercial-NoDerivatives). For more Information see:
https://creativecommons.org/licenses/by-nc-nd/1.0

gesis
Leibniz-Institut
für Sozialwissenschaften

Mitglied der
Leibniz-Gemeinschaft

The State vs. its Citizens
A Note on Romania, Europe, and Corruption

DANIEL BARBU

As maintained by most accounts, both foreign and domestic, Romania is a corrupt country. According to journalists, civic activists and public prosecutors alike, everybody having been in high office or currently holding one should be deemed a suspect, if not a would-be offender. The President is indicted for embezzlement of public funds, the trial being in recess for the duration of the mandate. His predecessor was also indicted for unlawful use of presidential power. The financial assets of the Prime Minister were searched into by the General Attorney's Office on suspicion of criminal association with a major corporation itself under investigation for fraud. The former head of Government has been already put on trial for subornation. A parliamentary committee contemplated at one time to look into an irregular real estate maneuver allegedly undertook by the Minister of Justice. Many former and serving ministers, as well as numerous members of Parliament, mayors and local councilmen are or have been arraigned for bribery, misappropriation or mishandling of public property.

Although no prominent public official prosecuted for corruption or related offences has yet been found guilty as charged after a due process of law, corruption seems to be not just hearsay, uttered by observers with a keen legal and civic sight, repeated by the national press and echoed by European reports, but a genuine brand name of everything Romanian. How is it possible that no top politician or statesman exposed in the media as a venal profiteer of post-communist transition, and summonsed as one by the public prosecution, gets to receive the deserved retribution in court? The most recent response to this frustrating concern is an authoritative one, as it was given in February 2006 in a speech of the President of Romania: judges do not usually convict defendants put on trial for corruption because they are themselves corrupt, because they are just one of the components of a wicked and generalized spoils system. Who is not corrupt then? The answer comes from the same source: the prosecutors and the intelligence officers. They are, in the presidential addresses, in the eyes of the media, and according to scores of public intellectuals and civic activists, the indispensable heroes of a swift and reliable accommodation in Europe. In order for the country to establish itself successfully in the Union as a dependable member, they should be free to investigate anyone, at any time and costs, and with no regard for legal procedures and civil liberties, which could be considered as mere formal technicalities that the wrongdoers and their defending counsels tend to use and often abuse, in collusion with the judges, with the only purpose to obstruct justice as required by European standards. If they have nothing to hide, if they are honest, law-abiding citizens, why do they bother when their phones are intercepted, when their homes are searched, when they are kept in custody for thirty days, when they are denied access to the evidences collected by the prosecution, when their neighbors and friends are interrogated, when the bank accounts of all their acquaintances are under scrutiny? This candid question summarizes not only what is considered to be the Romanian

common wisdom of the pre-accession period, but also the official position of the people in charge of completing the accession. Par for the course, on December 17th, 2005, a reunion of public prosecutors and NGOs representatives, presided over by the President and the Minister of Justice, famously built up to the conclusion that, when it comes to investigate corruption, no one should be presumed innocent until proven guilty[1]. In setting up this bold guideline for the fight against corruption, the President, the Minister and their prosecutors claim they are enthused by the advice and fully enjoy the approval of the European Commission.

Indeed, as far as the knowledgeable citizen can tell, the Commission is the inspiring force behind the topical anti-corruption philosophy and dealings of the Romanian relevant authorities. Both theory and praxis of this legal and political approach to corruption focus altogether on the rights, freedom of movements, absolute discretion of inquiry, and privileges of prosecution and intelligence agents. In the mid 1990s, any public discussion on such a topic would have seemed at least inappropriate, if not decidedly indecent, for unlimited and occult power vested in prosecutors and secret police was remembered as a distinctive feature of the deceased communist regime. Indeed, scientific socialism avowed that strengthening the sway of a controlling and repressive state over a society dispossessed of formal bourgeois civil liberties was the best way to prepare the promised extinction of the state itself through its dissolution into a society free from need and cured from greed, once communism was to be achieved[2]. Today, as it gets ready and is formally invited to dissolve some of itself into the European Union, the Romanian transitional state is again haunted by the passion of its own empowerment to command a society of citizens unprotected by the rule of law and which individual rights are critically limited. Then and now, the problem of acquisition is the core issue that divides that state from a society it has the ambition to mould. Then, under state socialism, the holders of private propriety, construed as the root of all forms of exploitation, were politically condemned, socially humiliated and individually punished. Now, once again, noticeable private wealth, deemed as the offspring of corruption, is exposed when present among politicians, is a derided social value, and, as a consequence, legal charges are being filed against its individual possessors.

Today, as some like to put it ironically, and they probably do not err too much, capitalism is ultimately on trial in any corruption case. In the process of making Europe their home, the Romanian authorities entitled to fight corruption use the pattern of the Stalinist judicial proceedings. A citizen is considered as good as guilty of corruption from the very moment he or she is denounced by the press, or the public prosecutors take an interest in him or her, whatever action comes first. The legal system is not established in order to uncover acts of corruption by means of solid evidences and to inflict penalties on citizens (able to defend themselves to the full extent of their civil rights) properly convicted for having committed those particular acts. Romanian judiciary was designed under communism and still works as an instrument used by the state to unmask citizens on whom the authorities (and their friendly press) have passed judgment before any hearing in court. Therefore, corruption is not the input, but the outcome of the system. The

---

[1] Daniel BARBU, "Corupția ca metodă de integrare europeană", *Ziarul Financiar* VIII, nr. 1876, 8 mai 2006, p. 12.

[2] Cf. Marcel GAUCHET, "L'expérience totalitaire et la pensée de la politique", *Esprit*, no. 7-8, 1976, pp. 13-14.

Romanian justice system is not penalizing persons proven guilty of corruption beyond any reasonable doubt, but is actually producing corruption as a necessary enemy of the state.

How can it be? Why does the European Commission ostensibly support an anti-corruption judicial device fueled by a legal philosophy conceived under state socialism and enforced ever since[1]? In the wake of the demise of state socialism, West European leaders were not able, or not willing to tell what was communism all about and how it transformed generic institutions – as Courts, Parliament, Army or Government – beyond recognition. They simply decided what should come next: enlargement to the East. They assumed in 1993 that the Western liberal democracies and the ex-communist states were not after all too different in political nature. That latter, shaped by more than forty years of suppressed civil and political liberties, radical social engineering and inhibited economic initiative, were not discarded from the outset as structurally and functionally incompatible with the values upheld by the Union, but were merely asked to adjust themselves to three basic criteria. They all complied with this requirement by incorporating the *acquis communautaire* into their legislation, which is nothing more than an operation of literary criticism. Some of them managed to avoid any approach that would fall into the category of literary history. The Romanian post-communist executive, for example, does not care yet to cast on the rubbish heap of history the communist Penal Code and Code of Penal Procedure and deal with them as mere documents of a secluded legal past. Hence, in its 2006 spring session, the Parliament had to take into account at once four mutually exclusive versions of the criminal statutes: various revisions of the communist statutes still used in Courts, the Codes initiated by the erstwhile Minister of Justice in 2003 and dully promulgated by the President, the ones advanced by the present head of the Department of Justice, and a long series of amendments of the same Minister to her own initiative. No European official was ever disturbed by this resilience of the two key legal texts of the totalitarian regime amidst a legislative chaos unprecedented and unparalleled in the general history of constitutionalism. Many insisted instead to see behind bars fifty corrupt top politicians as a clear gesture of empathy with the European standards. And there is more to it. The communist penal culture is currently dismissed by inconspicuous acts of Parliament, which, as an institution, seems eager to replace the old Codes, often times against the will of the Minister of Justice prized by Brussels as a champion of the fight against corruption.

The European civil servants watching over the process of a closer membership of the Union encourage the obsolete Romanian judicial system not so much because, in terms of corruption, there is a social epidemic of guilt that only extreme means can eradicate, but rather because that kind of contagious guilt is badly needed as a comprehensive topic of country analysis. This deduction does not imply that extended corruption is, in Romania, only a deceptive image. Romanians, common or outstanding, break the law every single day. As do other enduring Europeans, like the French for instance, whose President is on pending trial for corruption and former Prime Minister is already convicted for embezzlement. In

---

[1] Article 141 of the Romanian Constitution of 1991 (maintained as article 143 in the 2003 revision) states that members of the Constitutional Court should have a legal professional experience of at least eighteen years, and, by way of consequence, should have held a significant position in the communist judicial system.

Romania, corruption is given proportions larger than life because it can be utilized as an intellectual tool. It renders intelligible the obvious economic and political disparity between Romania and the Union. Corruption explains away this difference. Should corruption be uprooted, Romania would prove itself to be a country quite similar in most respects to the average European member state. Corruption is therefore a political commodity: it helps both Romanian and European policy makers to evade a thorough analysis of what is (if anything) consistent with representative democracy, the rule of law and liberal citizenship in the complex make-up of a post-communist polity.