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SYMPOSIUM 2004: COMBATTING CORRUPTION**THE EUROPEAN UNION AND ROMANIAN
MENTALITATE:
A CASE STUDY OF CORRUPTION**

Kandis Scott

In Romania, petty corruption – the bribes, the gifts, the cheating that grease the wheels of daily life – presents a problem different from the large-scale corruption discussed at this Conference.¹ Ending low-level corruption requires a change in community attitudes, which is not the usual realm of legal rules or within the expressive or social norm function of law. The pervasive low-level corruption in Romania reflects a cultural bar to fighting large-scale cheating.

Influence of the European Union

As an applicant for accession to the European Union in 2007,² Romania is now making legal and other changes to comply with conditions for admission. One sticking point is the European Union anti-corruption requirement, derived from the very general Copenhagen criteria: “rule of law,” “a functioning market economy” and “the ability to take on the obligations of membership.”³ Romania has adopted anti-

¹ Transparency International, National Corruption Report 2003 at 13-14 (examples of some large-scale Romanian government corruption), *available at* <http://www.transparency.org> (last visited Sept. 21, 2004).

² European Commission, EU-Romania Relations (2004) (Romania submitted its application for accession June 22, 1995), *at* <http://europa.eu.int/comm/enlargement/romania/index.htm> (last visited Jan. 21, 2005).

³ The European Council adopted criteria for new members' accession to the Union at a 1993 meeting in Copenhagen, Denmark. Candidate countries must achieve “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.” European Commission, EU Enlargement – A

corruption legislation, but according to the European Union Parliament, it has not enforced those laws sufficiently.⁴

An example of this is recent Romanian legislation attempting to assure the independence of judges from the executive power.⁵ This formal approach to creating the rule of law fails to address a more critical situation in the judiciary. Clients report that attorneys ask for money to bribe judges. Attorneys say this is rare, but do not deny that the practice exists. Judges, aware of the public's complaint, insist that the lawyers usually keep this money. If an attorney loses the case, the lawyer tells the client that the other side gave a bigger bribe, so clients commit to paying more next time. Even if this conventional wisdom is false, that Romanians believe bribery to be widespread supports a general cynicism that impairs efforts to change the culture of corruption. Judicial independence is not enough.

Romanians agree with the European Union⁶ that their nation does not fight corruption effectively. Although a majority of Romanians are satisfied with the mass media's efforts to combat corruption, the work of the police, government, and courts was unacceptable to more than 24% of the respondents.⁷ In fact, 17% of those surveyed believe that the government had taken no measures against corruption.⁸ This cynicism extends to the private sector also. For example, 50% of those surveyed

Historic Opportunity, *available at*

<http://europa.eu.int/comm/enlargement/intro/criteria.htm> (last visited Jan. 21, 2005).

These general statements, called the Copenhagen Criteria, are the basis for the more specific requirements for accession.

⁴ European Parliament, 2003 Regular Report on Romania's progress towards accession, EUR. PARL. DOC. (COM (03)676 final OE) at 5-7/27, *available at* http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_ro_final.pdf.

⁵ *See, e.g.*, Lege No. 653, Monitorul Oficial de Romania No. 905, Dec. 12, 2002, *available at* <http://www.monitoruloficial.ro/>.

⁶ European Parliament, *supra* note 4, at 6-7/27.

⁷ *Id.* at 20.

⁸ *Id.* at 19.

believe that wealthy Romanians achieved success by violating the law and another 24% believe that personal relationships produced the wealth. Only 8% believe rich Romanians acquired their wealth through hard work or personal merit.⁹ But these attitudes do not influence individual behavior: the same Romanian ticket taker who criticizes high level corruption, the nation's failure to defeat it, and the lack of personal integrity will admit a friend to a concert without a ticket.

Top-level corruption and petty cheating are related. According to the Romanian Academic Society, corruption at the top makes it difficult to argue that fighting petty bureaucratic corruption is a feasible or worthy cause.¹⁰ While the European Union aims its efforts at top-level government corruption-- the same behavior that troubles ordinary Romanians-- it also wants to change low-level cheating. For example, the European Union asks that an "anti-corruption culture develop in public service" so that the entrenched culture of corruption does not continue to hold the nation back.¹¹ To satisfy the European Union, Romanians have to replace their culture of cheating with different social norms.

Changing Culture

Romanians must change their *mentalitate*, the attitudes that the Romanians themselves acknowledge and criticize in the abstract. Romanians are so inured to petty deceit that they are unconscious of its unethical character in specific instances. This begins in grade school.

⁹ Open Society Foundation, Public Opinion Barometer 17 (October 2003), at <http://www.osf.ro/en/index.php?option=content&task=view&id=18&Itemid=37> (last updated Jan. 25, 2005).

¹⁰ Alina Mungiu Pippidi & Sorin Ionita, *Romania's Struggle for Better Governance, in ROMANIA AND BULGARIA BETWEEN NATO AND EU 59* (Romanian Academic Society ed., 2003), available at http://www.sar.org.ro/files_h/docs/events/brussels-final.pdf.

¹¹ European Parliament Resolution on Romania's Application for Membership of the European Union and the State of Negotiations, COM (2000) 710 - C5-0610/2000 - 1997/2172(COS), available at http://europa.eu.int/comm/enlargement/docs/ep_resolutions/romania.htm.

Students around the world cheat, but unlike most Americans, Romanian pupils readily admit doing so. They blame their onerous workloads (7-12 courses in a semester all demanding much memorization) and their parents' insistence on high grades (a demand often enforced with a stick). Students explain that because the teachers know about the cheating, it is no problem. Their parents also are aware of their cheating but are more interested in outstanding marks than personal integrity.

When I was teaching in Romania, I received a paper not in the student's handwriting. The girl readily admitted that her father had written it because she was busy. That is the kind of parent who would bribe those who grade the college entrance exam. One high school student provoked a "mini-scandal" when she received a 10 on that exam having never received higher than a 7 during her school years. College students bribe professors for grades and applicants make payoffs to get a job. Corruption exists at all levels.¹²

Where does this *mentalitate* come from? One explanation is grounded in the fact that almost 30% of Romanians are poor.¹³ Their seeing the lifestyles of other Europeans on television produces high but, more often than not, frustrated aspirations. The average reported Romanian salary is about \$132/month,¹⁴ the approximate wage of entry-

¹² Andy Trincia, *Corrupting Future Prosecutors: Law School for Dummies*, PEACE CORPS WRITERS (Nov. 2003), available at <http://www.peacecorpswriters.org/pages/2003/0311/prntvrs311/pv311pcvrom.html>.

¹³ The World Bank found 28.9% of Romanians were poor in 2002. World Bank, available at <http://lnweb18.worldbank.org/eca/eca.nsf/0/C4CFB7B8C4D1658185256C240050A6A4?OpenDocument> (Sep. 2002).

¹⁴ The exact average monthly gross salary in 2000 was \$132.61. This figure is derived by dividing the average monthly salary in *lei* by the average exchange rate, as reported by the National Institute of Statistics and Economic Studies (NISES). In 2000, the former was 2,876,645. NISES, available at <http://www.roembus.org> (last visited Jan. 24, 2005). The latter was 21,692 per dollar. NISES, available at http://tpb.traderom.ro/En/Cd/frame_gen.htm. There is a significant but unquantifiable under the table economy, but even including that the nation is generally poor.

level schoolteachers, who then give private lessons to supplement their salaries. In fact, many successful educators teach school only for the social security and medical benefits and to meet potential students for their financially rewarding private classes. Even public bus ticket inspectors supplement their salaries with bribes. A transit rider caught having failed to punch his ticket should be fined but often openly negotiates a smaller payment made directly to the inspector in the bus.

Secondly, an “underdeveloped bureaucracy,” not fully modernized into an impartial, impersonal, fair institution, staffs Romania’s public service.¹⁵ Functionaries do not understand professional ethics or see their role as that of civil servants, rather than private fixers. One employee of the Romanian Environmental Protection Agency prepared applications for environmental permits as a part-time job. She saw no conflict of interest because she did not personally review the applications she prepared--her colleague at the next desk did so. The United States Social Security Administration staff does not behave like this and not because employees fear criminal prosecution. Fair dealing is a social norm in America and bureaucrats are paid enough to conform to that norm.

A third explanation for the Romanian *mentalitate* arises from its communist history. In the worst days of the Ceașescu regime, there were shortages of all consumer goods. One who worked in a butcher shop would hold back a piece of meat for a friend who was saving her the last bottle of yogurt in the milk store. As was true in many socialist states, workers would repair their own homes with lumber taken from the workplace. These are not stories of scandals, but rather of survival. Such

¹⁵ Pippidi & Ionita, *supra* note 10, at 58, available at http://www.sar.org.ro/files_h/docs/events/brussels-final.pdf.

communist-era strategies continue to influence modern Romanian attitudes.

Status also plays a role in creating a culture of corruption. Providing discriminatory public service is a norm where there is uneven power status. A favor is granted to assert superior status, not as part of a financial exchange. Seeking a favor acknowledges the higher status of the other. These forces operated even under the communists because Party membership accorded status when other forms of social stratification were banned.¹⁶ In a nation with no middle-class, these power issues remain and support petty corruption even where there is no economic gain.

I experienced this phenomenon personally because, being an American in Romania, I had a status that inspired others to assert their yet higher status. I was in Bucharest, an eight-hour train ride from home, when the train workers went on strike and the few airplane seats were immediately sold. While interviewing a lawyer at one of the big three national labor unions, I described my predicament. The president of the union intervened and assured me he would get me home. I expected a car ride with union members going my way, but he found me a seat on a “sold out” plane. He expected nothing but thanks from me. His influence is called *pila* and those with high social status use it generously.

Russell Powell explains a variant of the relationship between status and corruption. Power, often an attribute of status, is exercised over underlings by generously permitting their corruption. Turning a blind eye is more controlling than granting a favor because the higher-up can withdraw the generosity at any time. In this way, top-level officials dishonestly exploit lower level officials’ practice of corruption to gain

¹⁶ Pippidi & Ionita, *supra* note 10, at 59, available at http://www.sar.org.ro/files_h/docs/events/brussels-final.pdf.

greater power.¹⁷ Such systems survive because they become the social norm. Amir Licht observes that in High Power Distinction societies, taking advantage of one's power position is legitimate. Low power persons dislike being taken advantage of but accept it as a fact of life.¹⁸ "Most Romanians . . . loathe this activity, but alas, it's the 'system' and they are stuck with it. Pay to play or you're not in the game."¹⁹

The Ineffectiveness of Law

Trading gifts and money for public services and corrupt attitudes arising out of poverty, communist history, or status relationships are not readily susceptible to eradication through better implementation of laws as demanded by the European Union

Communist governments punished corruption and expressed anti-corruption values without affecting Romanian culture.²⁰ In the accession process, the European Union is trying for more: to socialize applicants to European Union norms. It acknowledges the need to change attitudes in order "to root out the high level of corruption in state and society."²¹ Although states can adopt European Union standards formally, as Romania has done by adopting new anti-corruption laws, the E.U. wants

¹⁷ Conversation with Russell Powell, Visiting Professor at Santa Clara University School of Law, in Santa Clara, Cal. (Mar. 16, 2004).

¹⁸ AMIR N. LICHT, *THE PERIOD OF SOCIAL NORMS: A NEW PERSPECTIVE* 34 (2001).

¹⁹ Trincia, *supra* note 12.

²⁰ *See also*, Dionysia Tamvaki, *The Copenhagen Criteria And The Evolution Of Popular Consent To European Union Norms: From Legality To Normative Justifiability In Poland And The Czech Republic* 22 (Paper prepared for the Workshop: "Implications of Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders" EUI, Florence, 28-29 November 2003), *at*

http://www.google.com/search?q=cache:39A-tJrVtHQJ:www.iue.it/LAW/Events/WSWorkshopNov2003/Tamvaki_paper.pdf+Dionysia+Tamvaki&hl=en&client=firefox-a. (Nov. 2003).

²¹ European Parliament, *Report On Romania's Progress Towards Accession* 6/27 (2004) (emphasis added), *available at*

[http://www.europarl.eu.int/meetdocs/delegations/roma/ROMA20040318/p5_a\(2004\)0103_en.pdf](http://www.europarl.eu.int/meetdocs/delegations/roma/ROMA20040318/p5_a(2004)0103_en.pdf). The European Union contemplates a top down battle against corruption:

to habituate the public so that “European Union norms assume [a] ‘taken for granted nature.’”²² Despite these ambitious goals the European Union’s efforts have been as unsuccessful as those of the Romanian government.

Using laws or conditions of membership for their expressive function²³ fails because the meaning of law is a function of the social norms, not government intentions.²⁴ A norm exists only where there is a consensus about how to behave that affects what people actually do.²⁵ When citizens internalize a social norm they make it a moral commitment with a psychological penalty for its violation.²⁶ Romanians have no such commitment to deter petty cheating. They understand that corruption by high officials is wrong, but regard low-level corruption as necessary and harmless. For example, a Romanian official assigned to combat bank laundering acknowledged but brushed off the fact that a patient is expected to bring a “gift” to a public health doctor. He saw no connection between petty bribery and laundered bribe money.

Because those responsible for norm management are untrusted Romanian politicians, the difficulty of inculcating personal anti-corruption attitudes is greater.²⁷ The expressive function of law can support individuals who want to change social norms. For example when a public transit system distributes “good conduct guides” asking cell phone users to quiet their conversations, passengers are empowered to ask others to lower their voices. But Romanians do not now seek to change their low-level

“[T]here must be the political will to eradicate corruption for only this will lead to changes in attitude.” *Id.* at 7/27.

²² Tamvaki, *supra* note 20, at 14.

²³ See Cass Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2051 (1996).

²⁴ *Id.* at 2050.

²⁵ Robert Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585, 587 (1998).

²⁶ *Id.* at 585.

corruption. Given no Romanian norm against petty cheating, anti-corruption laws reflect only the government's edict, an edict originating with the E.U., and do not influence behavior.

The future for honest Romanians does not lie in the European Union's conditions for membership. Hope is found in small indications that social norms are changing. In 2003 fewer Romanians were asked for and gave "gifts" in exchange for public services than in 2000.²⁸ If true, and even if untrue because those surveyed were ashamed to admit bribery, these results show changing attitudes. Secondly, more than Poland and The Czech Republic where European Union socialization failed,²⁹ Romania has traditionally valued things Western and has seen itself as a Western nation. It considers its *mentalitate* to be an artifact left by its Eastern conquerors. Just as this makes Romanians comfortable with joining European Union, it may eventually open them to European Union norms.

Although European Union conditions are not effective in swaying individual Romanians' attitudes towards corruption, the media may be influential.³⁰ Entertainment showing people resisting bribes as it now shows them using condoms in love scenes, news reports of honest actions,

²⁷ Sunstein, *supra* note 23, at 2049.

²⁸ *E.g.*, in 2004, bribes accompanied 32% of citizens' encounters with medical services; 14%, with the legal system (5 year average) and 7%, with city hall; and 11%, with the police. MetroMedia Transilvania, Barometrul de Opinie Publica 53, at <http://www.mmt.ro/Cercetari/bop%202004.pdf> (Mai 2004). This is in contrast to 2000, where bribes were tied to 55% of citizens' encounters with medical services; 24%, with the legal system, 12%, with city hall; and 20%, with the police. Open Society Foundation, Public Opinion Barometer 16, at <http://www.mmt.ro/Cercetari/bop%202000.pdf> (Mai 2004).

²⁹ See Tamvaki, *supra* note 20, at 17-18, 20.

³⁰ Michael McFaul, an expert on Russia, in referring to large-scale government corruption, contends that only an effective opposition party and a free press can stop corruption. E-mail from Michael McFaul, Peter and Helen Bing Senior Fellow, Hoover Institution, Stanford University, to Kandis Scott, Professor of Law, Santa Clara University School of Law (Aug. 8, 2004) (on file with author).

and public service advertisements can be more effective than law in reaching low level corruption. Since our Conference, the European Union has moved in this direction. It funded a media campaign launched by Transparency International to fight corruption in Romania. The slogan is simple: “don’t bribe.” The effort includes a television program, web page, leaflets, and stage shows in thirteen towns. A short television ad characterizes bureaucrats’ bribe taking as burglary.³¹ This is a clear attempt to change the public’s benign attitude towards corruption to one of hostility, like that towards theft.

It is difficult for those committed to advancing the rule of law to acknowledge the inadequacy of law. Nonetheless humility demands recognition that the power of social norms has overwhelmed legal attacks on petty corruption in Romania and other countries. Alternatives aimed directly at underlying social attitudes have a greater likelihood of success.

³¹ See Mihaela Gherghisan, *Anti-corruption campaign launched in Romania*, EUOBSERVER.COM, at <http://euobserver.com/?sid=17&aid=17063> (Aug. 9, 2004).