



## Simulation and resistance in the democratization of Romania: Public policy instruments between the normative control of the West and the survival of local elites

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### Abstract:

The present paper aims to analyze the process of decommunization and democratization of Romania, emphasizing both the normative control exercised by Euro-Atlantic institutions and the power-preservation strategies used by post-communist elites.

The transition to a democratic state was not achieved, as expected, through immediate and transparent reform policies. These were marked, on the one hand, by the formal adoption of Western institutions and procedures (to satisfy the accession criteria) and, on the other hand, by an informal resistance aimed at neutralizing their impact on the inherited power structures.

Methodologically, the study relies on public policy analysis and the path dependency model to identify the mechanisms through which local elites slowed down lustration legislation and “captured” independent institutions through political appointments. The paper demonstrates that, although the West imposed democratic control instruments (such as the MCV or transparency laws), their success was partly due to the Romanian political system’s ability to mimic compliance without giving up discretionary control over state resources. The conclusions emphasize that in the process of Romania’s democratization, important democratic forms were often emptied of content by various techniques of institutional resistance, which made it a hybrid one. The establishment of the rule of law with all its specific principles and values is possible by gradually removing the mechanisms inherited from communism and by creating a culture of citizen empowerment to fight against authoritarian tendencies that might emerge.

**Keywords:** *decommunization, path dependency, public policies, political resistance, institutional capture, normative control.*

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With the fall of the communist regime, public policies of decommunization were marked, on the one hand, by the resistance of local elites to retain their power and, on the other hand, by the normative control of Euro-Atlantic structures. These clashed, more or less, depending on the interests of each party. Under these conditions, Romania “borrowed” Western instruments to satisfy external requirements, while preserving internal control mechanisms. In the following, I will analyze the paradox of assisted democratization, the “facade” instruments used by the state, the mechanisms of resistance to external control, the conflict of control with an emphasis on the MCV case and on justice, and in conclusion I will make some references regarding external control and the hybrid regime that emerged following the processes of decommunization and democratization.

In this sense, I consider Nicolae Iorga's quote important: "Let it be a lesson for all the reformers of today and tomorrow... for all those who come to power with their pockets full of laws that pass but are never applied, because the poor nation lives much better respecting its traditions than all the laws; in this way, a good law turns into a tradition, leaving aside bad laws." (Iorga, 1927/1993, p. 93). In our situation, external control could lead to the creation of legislative frameworks that would help establish a functional and prosperous democratic state in a shorter time. However, the control of the elites and the emptying of the substance of the laws issued only with the aim of showing Western states that we are consistent and that we support the democratization process, led to the preservation of certain habits specific to the old communist regime, referring here in particular to corruption and the network of clientelism that had formed throughout the communist period.

The research questions that guided the analysis were the following: 1 To what extent were the instruments of public democratization policies adopted as a result of an internal democratic conviction or as a survival strategy in the face of external pressures? 2. What were the main techniques for “neutralizing” decommunization policies used by the Romanian political elites to maintain control over state resources? 3. How did the balance of power between the EU’s normative control (through the CVM) and the resilience of the Romanian political system evolve in the post-accession period? 4. Can "institutional capture" be considered a form of continuity of control methods specific to the old regime under a new democratic form?

### **1. Introduction: The Paradox of Assisted Democratization**

The end of communist regimes for some of the Central and Eastern European states led to the engagement of the West as the architect of the immediate reforms that were absolutely necessary for the installation of new democracies in states with totalitarian pasts. In the following, I will define the concept of “normative control” in order to understand what this assisted democratization meant and how the control mechanisms from the West worked, and also how it was possible for Romanian society to find options through which to maintain its levers of power.

Normative control is the process by which the compliance of rules, decisions or legal acts with higher-ranking norms (the Constitution, organic laws) or compliance with pre-established quality standards is verified. In this sense, the European Union has a normative control committee, an independent body within the European Commission with the role of advising the College of Commissioners in order to provide a central quality

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control. It also provides support to the legislative process, especially in the early stages of impact assessments and Commission evaluations.

Although control suggests that it is an instrument of pressure and tension because it could identify problems/irregularities/violations of norms to be remedied, it should be seen as a “barometer that indicates how the person called upon to apply the decision acts, as well as the degree to which the decision corresponds to the purpose for which it was issued” (Tofan, 2009, p. 293).

A simple search in an explanatory dictionary reveals that the notion of control refers to the action of verifying a situation or activity in order to observe its evolution and improve it, directing it when necessary (Romanian Academy, 2012, p. 231). For administrative law activities, the activity of public administration is considered, with certain values, usually those enshrined in legal norms.

Also, the Romanian elites were in a position where they needed external legitimacy, but were put in a dilemma, risking losing power through real decommunization. They aimed to “maintain their privileges and squeeze as much of the state’s wealth as possible” (Boia, 2013, p. 117) through various methods of corruption, which after 1989 can be considered “an effective technique in the mechanism of redistribution of national wealth, the structure of institutions and their functioning” (Opriș, 2016, p. 138).

### **2. “Facade” Instruments (Mimeticism)**

In political science, the choice of public policy instruments is never neutral; it reflects the distribution of power and the objectives of political actors. In the context of the adoption of transparency and anti-corruption laws in response to EU conditionality, institutions were created that respected European patterns (for example, ANI, CNSAS), but whose functioning is conditioned by political resources and appointments.

In the case of Romania, we can talk about a mix between indigenous instruments (often used to simulate reform or maintain control) and imported/imposed instruments (as part of democratic conditionality). These instruments can be classified according to their usefulness in different processes. Thus, we distinguish between decommunization instruments, democratization instruments and those of transparency and civil control.

#### **2.1. Decommunization Instruments (Focus on Justice and Memory)**

These were most strongly negotiated between post-communist elites and civil society supported by Western partners. The first important instruments that should be mentioned here are the lustration instruments that were dissolved, postponed and ultimately did not diminish their purpose, considering them to be even failed. Romania chose an extremely weak lustration model compared to the Czech Republic or East Germany. The Lustration Law was successively blocked at the Constitutional Court, a legal instrument used here as a political barrier.

Also, “Ghetto-Archive” type institutions were created, such as the CNSAS - National Council for the Study of the Archives of the Securitate - a public policy instrument based on the German model (Gauck Institute), but adapted locally. Romania chose a “controlled access” model, where political control over the CNSAS council was an instrument to limit the effects of decommunization. The Institute for the Investigation of the Crimes of Communism and the Memory of the Romanian Exile was also established. Through the C.N.S.A.S., citizens had access to their files drawn up by the former political police (Securitate), and through the IICMER, attempts were made to identify those guilty of crimes and abuses committed during the communist period. By

law no. 187 of 07.12.1999 regarding access to one's own file and the exposure of the Securitate as political police published in the Official Gazette no. 603 of 09.12.1999, citizens had the chance for the first time to have access to their own file. From this moment, small steps followed the creation of a legislative framework through which citizens could find out information, to the extent that these files were declassified and left to the public.

To all this is added the symbolic condemnation of the old political regime through the Tismăneanu Commission. This was an instrument of memory politics (politics of memory). It was an internal election of the presidency (2006) to obtain legitimacy before the West, even before joining the European Union. This was completed with the publication of the Final Report condemning the old regime, considering it to be "illegitimate and criminal" (Presidential Commission for the Analysis of the Communist Dictatorship in Romania, 2006, p. 636).

Thus, transitional justice measures were limited only to the removal of old communist symbols, without criminal prosecution for crimes committed during the communist regime. Although lustration laws were adopted several times, they were declared unconstitutional. In practice, lustration laws were not implemented (Dujisin, 2021, p. 80). This is how the concept of "unfinished revolution" appears, which conveys the idea that there is still a negative influence on society from the old communist regime (Dujisin, 2021, p. 67). Other authors use the phrase stolen revolution (Mazilu, 1991) or that it opened new horizons for the "Great Post-Communist Robbery" (Copilaș, 2017) which generated rapid enrichment for opportunists who knew how to profit in a negative way from the transition to a market economy.

## **2.2. Democratization Tools (Focus on Institutional Reform)**

These instruments are based on a massive influence of Western "normative control". The conditionality imposed by the EU was achieved through the Cooperation and Verification Mechanism – CVM. This was the clearest instrument imposed by the West. It is not just a monitoring procedure, but a policy steering instrument through which the EU controlled Romania's legislative agenda in the field of justice and anti-corruption for over 15 years. This was particularly necessary given that the transition to a state of law was considered to also include a transition of justice, which at that time had some problems. Corruption had also affected this part, which was particularly important for the proper functioning of a state of law. Thus, corruption methods, such as bribery, had also affected some magistrates, who were part of this process and who reduced sentences or affected sentences by invoking lack of evidence, while they themselves were concealing some corpus delicti and incriminating evidence (Morar, 2022, pp. 374-376). "The purpose of the bribe was, most often, to speed up the procedures and allocate files to certain magistrates. Most of those who were aware of corruption acts by individuals in the legal system did not report them, due to the too complicated process or because they were convinced that nothing would happen, the lack of trust in the criminal prosecution bodies being evident." (Danilet, 2009, p. 16) In this case, we observe how citizens' trust in justice decreases, how the fairness of justice affects trust in state institutions with a defense role. Therefore, institutional reform and implicitly justice reform was particularly important and even a condition for accession to the EU. Corruption affects the quality of democracy. A highly corrupt state can very easily slide towards authoritarian forms of leadership.

An instrument of external legal control transposed internally was the imposition of a governmental agent for the ECHR as the official representative of the Romanian state, who will function as a specialized structure within the Ministry of Foreign Affairs (MAE).

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Romania was forced to create public policy mechanisms to respond to the avalanche of lawsuits related to confiscated properties. The state has been confronted with these especially since the publication of Law no. 10 of 2001 on the legal regime of certain immovables taken over abusively between 06.03.1945 and 22.12.1989.

To all this are added the Independent Agencies (Regulatory Agencies). The West imposed the creation of "islands of efficiency" such as the Competition Council, the National Authority for Administration and Regulation in Communications (ANCOM - institution that regulates the electronic communications, postal services and information technology market in Romania) and the National Integrity Agency (ANI - institution responsible for verifying the assets, conflicts of interest and incompatibilities of persons holding public offices) in order to remove the control of resources from the direct influence of political parties. This economic democratization measure provided for the transition to a market economy and the creation of solid foundations that would bring prosperity to the state and wanted a reduction in the involvement of politics in the aforementioned process.

### **2.3. Transparency and Civil Control Instruments**

From the point of view of transparency and civil control, access to information of public interest was an important fact with Law no. 544 of 2001. Although adopted by a left-wing government (PSD), it was an instrument imported under pressure from civil society funded by Western foundations, the most important being Open Society. It is considered one of the most democratic laws in Romania, reducing the discretionary control of the bureaucracy. The transparency of the decision-making process took place through Law no. 52 of 2003) being considered an instrument of "participatory democracy" imposed as a standard of good governance by the OECD and the EU.

Regarding the origin of the instruments, the table below also presents the type of instruments and the political objectives that stood behind them.

**Table 1: Origin of the instruments**

<b>Type of Instrument</b>	<b>Origin/Source</b>	<b>Policy Objective</b>
Limited lustration	Internal (Post-communist elites)	Preserving the status quo and controlling the past.
Access points to archives	Mixed (Civil society + Western models)	Transfer of control of information to the citizen.
Independence of Justice (DNA/ANI)	External (Imposed by EU/USA)	Breaking political control over state resources.
Digitalization and E-Government	External (EU Standards)	Reducing corruption by eliminating human/bureaucratic control.

Romania practiced "institutional mimicry", adopted the instruments imposed by the West (as a form), but tried to control their functioning through political appointments or underfunding (as a substance). This is the essence of "democratization under control" in the Romanian case.

### **3. Mechanisms of resistance to external control: Elite survival techniques**

In the post-communist period, the Romanian political elites (coming from the second echelon of the PCR or from the new post-1989 business structures) did not oppose democratization head-on, but adopted a strategy of "resistance through adaptation". There

are four important mechanisms through which they tried to maintain their power within the state. First, they used the strategy of legislative dilution and amended draft laws in Parliament, emptying them of content, eliminating sanctions and making them practically unenforceable. Then, they controlled the institutions, “captured” them, using the political space to run agencies that should have been independent. And finally they used the Constitutional Court and turned it into an arbiter to block decommunization policies (e.g. the Lustration Law), thus they always had the constitutional challenge at their disposal. Added to all this is the excessive bureaucracy that further hindered the democratization process.

### **3.1. The “Legislative Watering Down” Technique**

The mechanism of operation of this technique was quite simple: The de jure acceptance of a law demanded by the West (e.g. the Lustration Law or justice reforms), but the introduction of amendments in parliamentary committees that made the respective law unenforceable. A conclusive example is represented by the systematic postponement of the Lustration Law until the targeted figures retired or left public life, transforming the law into a post-factum instrument, with no real impact on the control of power. This political concept is called Salami tactics which led to the slicing of the reform until nothing substantial remained of it.

If we were to analyze the lustration law, it had a course marked by postponements, repeated invalidations at the Constitutional Court and parliamentary amendments that neutralized its practical impact. Decision no. 820 of 7 June 2010 ruled against the first form of the Lustration Law adopted by Parliament in May 2010), the CCR declaring the law unconstitutional in its entirety, invoking the fact that we cannot rely on collective guilt, but individual guilt, and holding a certain position should only be condemned when the involvement of individual guilt within the regime could be demonstrated. After the first invalidation, Parliament amended the law and adopted it again in February 2012. The CCR intervened again, declaring the most important articles (Art. 1 letters c, d, e and Art. 8) unconstitutional by Decision no. 308 of March 28, 2012. In the end, the law was symbolically adopted approximately 22 years after the fall of the regime, and its emptying of content meant that no high-ranking person was effectively removed from office based on this law, because the moral and legal statute of limitations had already passed (5 years, as amended in Parliament).

Lavinia Stan will demonstrate that transitional justice in Romania failed due to the postponement of the lustration process. Compared to other states, such as the Czech Republic or Poland, which were much tougher and faster in terms of the lustration law process, Romania allowed the old elite to consolidate its power by converting political influence into economic capital. She believes that the measures were limited to symbolic justice, transforming the process into an instrument of political struggle between post-communist factions, rather than a moral cleansing of the state (Stan, 2013).

### **3.2. “Institutional Capture” through Political Algorithm**

This could have happened through the mechanism of establishing independent agencies required by the EU to ensure the required “checks and balances”, but the appointment of political loyalists to the boards of directors made way for dignitaries who manipulated decisions and actions. Thus, the institution reports the success of the reforms to Brussels (checking the criteria), but in reality it protects the group interests of local elites. For example, we can bring to attention the way of appointing members to the National Audiovisual Council (CNA) or to the boards of directors of state-owned companies.

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In order to understand why the institutions were resistant to change, why they were very difficult to reconfigure, why they manifested their rigidity and fixity in the face of change, we must consider the term path dependence that made them have all these characteristics. (Palier, 2009, pp. 193-194) Moreover, the creation of alternative institutions would generate high investment costs, therefore it was preferable for the state to adapt the existing ones, rather than to replace them, emphasizing the process of institutional development (Palier, 2009, p. 194). The same thing happened in Romania. With those few exceptions when those institutions necessary to control and diminish corruption and to condemn the old regime were created from scratch, many institutions were reorganized under the new democratic leadership. That is why Oprea is very right in his statement that during the period of “trials and errors” that the state went through in its democratic journey, “the conversion of the old democracy (...) took place, baptizing it democratic, liberal and pro-Western” (Oprea, 2016, p. 115).

During the communist period, the legitimacy and credibility of the communist leadership was also given by various personalities who accepted collaboration with the leadership. Thus, those who were terrorized by the security forces and who were later offered cooperation offers, by accepting them, ended up obtaining the party's recognition and in turn formed other generations of young people, thus giving legitimacy to the leadership. We can bring to attention the case of Noica who was converted to Marxism-Leninism in prison (Mungiu Pipide, 2002, p. 264). This example illustrates the fact that the coercive persuasion exercised by the communist regime led to the instrumentalization of prestigious intellectual figures who were made to choose between terror and privileges. In our transitional context, elites were noted who wanted the privileges they could have obtained by holding political or administrative positions, thus, it was quite easy to adapt to the new requirements. It was nothing new. The mechanism remained the same, it was only necessary to adapt to the new requirements of the political leadership, which no longer used terror this time, but perhaps blackmail, especially in the case of easily corruptible people who had a past that also involved violating norms that could have been easily brought to the surface.

In this context, we think of the political elite after 1989. It was this elite that tried to preserve its power. Just as many influential people of the time tried to submit to the new leadership, to agree with the ideas and ideology behind it, so after 1989, many of them just tried to take over from the ideas of the West and show their support in order to receive legitimacy and acceptance from it and the electorate. That is why we can say, like Oprea, that we witnessed the reconversion of the old elite, in many cases changing only its name to “democratic and liberal” (Oprea, 2016, p. 115). The mechanism by which all state institutions were directly controlled by the center (as in the communist period) was also preserved in Romania after 1989, through the appointments to key positions of officials who respected the political directives of those who held state power.

### **3.3. Using the Constitutional Court as a “Safety Valve”**

When external pressure (EU/NATO) forces the adoption of a radical decommunization law, the elites use their control over the referrals to the CCR to declare the law unconstitutional. This mechanism represented a “safety exit” in situations where the effect of a regulation could no longer be postponed or diminished, being, in fact, a form of “legalistic” resistance. Politicians can tell the West: “We wanted to reform, but the judges won't let us”, thus maintaining democratic appearances while blocking substantive change. This was abused throughout the transition period. Even today, the Constitutional Court plays a very important role in the governance of the state. In this

context, we mention only two judgments: Constitutional Court Decision no. 32 of December 6, 2024, which annulled the first round of the presidential elections of November 24, 2024, and the Constitutional Court Decision no. 153 of February 18, 2026 on the reform of the service pensions of magistrates, which later became Law no. 24/2026. If the first decision aroused the indignation of a good part of the citizens, many of whom lost their trust in this institution, the second decision, which was long awaited, being postponed countless times, was received with great positivism from the citizens

### **3.4. “Bureaucratic Overload”**

The mechanism of this excessive bureaucratization provided for the creation of a labyrinth of overlapping procedures and institutions, so that the responsibility for the failure of a democratization policy could not be attributed to anyone. Under these conditions, control becomes diffuse and difficult to monitor by European experts, allowing the maintenance of informal networks of power under the cover of a complex bureaucracy.

It is necessary to specify that the resistance of the elites did not represent a rejection of democracy, but rather an attempt to control the democratization process. The result was a diminution of the change, and in this case it was no longer possible to speak of a real paradigm shift in power. The result is what some researchers call a “Facade Democracy” or a “Hybrid Regime”.

## **4. The Conflict of Control: The MCV Case and Justice**

The analysis of the period of “democratic backsliding” represented the moment when local elites tried to regain control over the judicial system, defying the recommendations from Brussels. In this sense, a “non-engagement of politics in justice” was desired (Morar, 2022, p. 209). This would have shortened the transition period, would have helped create institutions that would resist any forms of corruption. Due to the fact that the old structures were not removed in time, they also affected the judicial system. Thus, the conflict of control in the MCV case was not a legal one, but one of power. The resilience of internal structures transformed justice into a space in which European norms were formally adopted, but emptied of content through interpretations of the CCR or through the inaction of local control institutions. The Romanian political and judicial elites did not accept external control (MCV) that would diminish their privileges. The idea of “delusions of grandeur” of the elites that stood behind these actions (Mungiu-Pippidi, 2002, p. 239) manifested itself by transforming control institutions into instruments of group protection. Instead of being a “barometer” of integrity (as Apostol Tofan said), internal control was used to “discipline” reformist magistrates.

This led to the establishment of the Section for the Investigation of Justice Offenses (SIJ) as a form of modern “coercive persuasion”. Instrumenting control through judicial inspection and SIJ led to the resilience of the old structures, which was seen in their capacity to create mechanisms that, under the pretext of legality, functioned as a brake on MCV. The elites controlled the legislative process to “dilute” the impact of the European recommendations, exactly as they did previously with the Lustration Law (through CCR Decisions 820/2010 and 308/2012).

The failure of the profound transformation of the judicial system under the MCV spectre demonstrates that the old power structures demonstrated acute resilience and managed to instrumentalize the verification mechanisms in favor of their own survival. Although administrative control should have functioned, according to the thesis supported by Dana Apostol Tofan (2012), as a “barometer” of the conformity of the decision with

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its social and democratic purpose, it was captured by an intellectual and political elite marked by “delusions of grandeur”. This elite controlled the transition through methods of coercive persuasion, which led to the emptying of content of European reforms and transformed control from a guarantor of independence into a filter for the protection of internal hierarchies. Under these conditions, the conflict of control in the MCV case was not a purely legal one, but a confrontation between the norms of modernization and an indigenous structure that, through constitutional and legislative blockages similar to those in the case of the Lustration Law, managed to maintain justice in a state of institutional captivity.

### **5. Conclusions: From external to hybrid control**

When there is no critical mass of internal support, the effectiveness of the imposed instruments is limited, which has led to the current state that shows us a democracy that is procedurally consolidated but fragile in substance (disguised illiberal democracy).

Returning to the research questions from the introduction of this paper, we will conclude that public democratization policies in Romania suffered a severe gap between legislative adoption (imposed by the West) and administrative implementation (controlled by local elites). The Form-Substance dichotomy made Romania a “diligent student” at the level of discourse, but a resistant actor at the level of substance. From here we observe that the Efficiency of External Control was limited, the normative control instruments of the West (such as EU conditionality) were effective in the pre-accession phase, but lost their force as soon as the “stake” of accession disappeared, allowing the phenomenon of democratic backsliding.

Decommunization was not a linear process of justice, but a fragmented public policy, used by political actors to obtain the “certificate of democracy” necessary for integration into the Western club, without completely exposing the networks of influence of the old regime. Therefore, decommunization can be seen as a legitimizing tool used to create a positive image of the state. The survival and preservation of power behind the old communist elites or those who asserted themselves in the newly formed entrepreneurial field was achieved through adaptation. The resistance of the elites did not take the form of an overt anti-Western opposition (as in other Eastern states), but of an intelligent adaptation: the use of democratic mechanisms (such as the Constitutional Court or parliamentary procedures) to block or delay structural reforms aimed at bringing about real change and a strong democratic consolidation. We can also mention a future perspective, the paper suggesting that for real democratization, external control must be doubled by a more robust internal civilian control, capable of penalizing political mimicry and forcing the transition from “facade democracy” to a political culture of responsibility.

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