

Romania Country Report: Is Romania a Failing State?

By Andrew Allison and Lisl Biggs-Davison
Published by The Freedom Association and
Centre for Research into Post-Communist Economies (CRCE)



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Executive Summary.....	3
1. Introduction	4
2. Romania: The Freedom Revolution That Never Quite Was.....	6
2.1 Free Press, Opening Minds	6
2.2 The Naïve Period	7
2.3 Reality Starts to Dawn.....	8
2.4 Back to the Future.....	10
2.5 Lifting the Veil	11
3. A Failing State in the European Union?	16
3.1 Thirty Years On.....	16
3.2 Time to Get Real.....	18
4. Conclusion – Reflections on the Dark Side of Romania’s Revolution that Never Quite Was	19
4.1 Recommendation for an Independent EU Investigation into Romania.....	19
4.2 Time to Protect British Interests	20

Executive Summary

- Despite Romania joining NATO in 2004 and the European Union in 2007, many of the assurances the country offered co-signatories concerning relevant standards and practices have not been fulfilled.
- Too often, old structures, networks and ways of working from the former communist era persist and continue to work against the country's democratisation and development.
- In reality, the notoriously brutal former Romanian secret police service, the Securitate, was not closed down as many would have liked but instead much of its work was re-organised, re-branded and to some extent re-tasked. Many of its capabilities, skills and personnel went on to find roles in new organisations such as the SRI (domestic intelligence service), SIE (foreign intelligence service) as well as a wide range of other agencies.
- Thirty years on from the end of Ceausescu's communist regime, Romania continues to disport a unique and wide-ranging combination of failings that when presented together represent a huge challenge both domestically within the country and to the EU.
- From the available evidence, it is clear that Romanian statecraft remains riven with systemic failings in the core areas of legitimacy and governance.
- Key institutions within the Romanian intelligence community have not only behaved unconstitutionally but they regularly flout European norms and standards on a large scale.
- In 2020, Romania remains a country in which its showpiece national anti-corruption agency, the DNA, has itself not only used forgery, fabrication and intimidation against those it has often arbitrarily singled out for targeting but also it has been used as a proxy for the domestic intelligence service, the SRI, that has purposefully undermined the judiciary by using widespread and unconstitutional infiltration, influence and intimidation.
- It is in this context that this report not only presents a wealth of evidence that questions the extent to which Romania can be classed as a failing state and failing democracy in Europe but it goes on to recommend the establishment of a full-blown Independent EU Investigation into several key areas of concern.
- The report also recommends that the UK no longer treats Romania as a regular EU member state, and instead acts to protect its interests and limit its exposure to Romanian failings.
- The report concludes that it is unacceptable for Romania as an EU member state to have a manifestly corrupt and unconstitutional 'anti-corruption drive'; engage in acts of lawfare; have intelligence operatives influence and/or infiltrate various levels of its judiciary; have some of the worst human rights and prison conditions in the European Council; frequently violate freedom of the press and media; oversee the emigration of a sizeable proportion of its talent, and; remain incapable of building even basic forms of infrastructure, such as motorways, for its own people.

1. Introduction

When the Iron Curtain crumbled in 1989, millions of people in Central and Eastern Europe finally dared to believe that freedom, democracy and the rule of law were close at hand. When in Soviet Russia the Gorbachev coup of August 1991 failed, and the Communist Party of the Soviet Union was dissolved,¹ millions more started to believe that ‘a normal life’ was possible for them too.

In Romania, the transition from communism to some semblance of market-based democracy was not easy or smooth.² In comparison to other newly freed states in Central and Eastern Europe, many within the Romanian Communist Party went on to re-brand and re-position themselves within other political parties. This included the National Salvation Front, later renamed Socialist Party of Romania, now called the Social Democratic Party (PSD).³ Alongside an extensive and agile state security apparatus, powerful and mutually reinforcing networks of influence also continued to hold significant sway over the evolution of Romania’s statecraft.

In some ways, what set Romania apart from other nations in Central and Eastern Europe was not a fundamental break from communism but an evolutionary transition towards a new form of corrupt authoritarianism under the guise of democracy. An authoritarianism that whilst displaying some of the veneer of a modern and democratic nation state continued to be moored in the more sinister practices of the past.⁴ Practices that in recent years have led to manifest failings across such a wide range of areas they beg the question: to what extent *is Romania a failing state within the European Union?*

It is with this question in mind that this report examines Romania’s evolution and journey since the heady days of communism. Covering areas that include Romania’s record concerning its economy, media sector, rule of law and human rights, it goes on to surface a reality peculiar to this most troubled of European states.

Methodologically, the report brings together a wealth of comparative information and data that has not previously been combined. As such, it not only addresses the question ‘Is Romania a Failing State?’ but it shines a light into what is fast becoming a dark side of the wider European Union. In highlighting parlous mismanagement of everything from Romania’s economy, infrastructure, talent, intelligence community, courts, human rights and reputation, the report details the reasons why Romania:

- has more people living abroad as a proportion of its population than any other country amongst the former communist countries of Central and Eastern Europe;
- has the worst human rights record within the Council of Europe – so bad it is now only comparable to Russia and Turkey;
- has the most corrupted anti-corruption regime within the EU;

¹ For more on this period see: <https://www.theguardian.com/world/2011/aug/16/gorbachev-guardian-interview> [accessed 18 January 2020].

² For an introduction to this topic read: <http://chnm.gmu.edu/1989/exhibits/unique-experience-of-romania/introduction> [accessed 14 January 2020]. Also read: Steven D Roper (2000) *Romania: the unfinished revolution*, Routledge, Oxford.

³ Tom Gallagher, (2005) *Theft of a Nation: Romania Since Communism*, C Hurst & Co, London.

⁴ For an insightful introduction to the political atmospherics of post-revolutionary Romania, read: <https://www.politico.eu/article/thirty-years-after-romanian-revolution-questions-remain-death-of-nicolae-ceausescu/> [accessed 14 January 2020].

- has the worst prison system in the EU, bedevilled with overcrowding, degrading conditions, absence of basic medical care and rampant violence among inmates;
- has the most infiltrated and politically stage-managed judiciary in the EU, and;
- has such a poor record in areas such as talent retention, motorway infrastructure and the rule of law that it is potentially becoming locked into a permanent cycle of socio-economic decline.

2. Romania: The Freedom Revolution That Never Quite Was

In Romania in December 1989, anti-communist demonstrations broke out in Timisoara and quickly spread to the country's capital, Bucharest. Quick to isolate and engulf the leadership of this oppressive communist state, it was not long before Nicolae and Elena Ceausescu tried to flee the capital. However, on the afternoon of 21st December, a group of protestors led by the poet Micea Dinescu broke into the state TV broadcaster and announced the end of the regime. It was not long before Nicolae and Elena Ceausescu were formally captured near the town of Tirgoviste. After a short show trial, both were executed on 25th December.⁵

2.1 Free Press, Opening Minds

Following the regime's demise, Romania gradually opened up to embrace new practices, ideas and institutions. Not only did a range of political movements and parties start to flourish but an independent media developed. As borders opened and people started to travel, by the early to mid-1990s, Romania enjoyed more than 1,200 newspaper titles.⁶ In order to establish the underlying institutional architecture necessary for a modern, democratic and market-oriented society, public policy debate engaged everything from the establishment of private property rights and privatisation to a new tax code and the contracting out of key services to the private providers. It was in this context that in late 1991, the Romanian parliament formally adopted a new constitution.⁷ Enshrining rights of assembly and freedom of thought, Article 30 specified that freedom of expression by the media was 'inviolable'.⁸

Following the 1989 revolution, the Romanian Communist Party newspaper *Scinteia* ('The Spark'), quickly rebranded itself as *Adevarul* ('The Truth'). Now aided by the distribution networks that it inherited, it quickly re-emerged as one of the Romania's leading titles with a post-revolution circulation of approximately 1.5 million. *Adevarul* followed an editorial line that was generally supportive of the National Salvation Front; the group of former communists who formed the government following the first free elections in May 1990. The other major national newspaper that existed at the time was *Romania Libera*. It was not only Romania's oldest surviving title dating back to the last half of the 19th century but it rapidly expanded to help fill a vacuum that had emerged following the collapse of communism⁹. Having a similar circulation to *Adevarul*, *Romania Libera* generally took positions that were critical of the government and prided itself with publishing facts that the former communists tried to hide. Pro-market, pro-Atlanticist and supportive of reform throughout the 1990s it evolved into the country's main investigative and centre-right newspaper.

It was in the midst of the polarising politics of this post-communist period that newspaper readership came to be indicative of political allegiance. While old guard supporters of the NSF (later DNSF) read *Adevarul*, supporters of the Democratic Convention and other opposition parties generally read to *Romania Libera*.

⁵ For more on this matter see: www.pressreference.com/No-Sa/Romania [accessed 20 December 2019].

⁶ Lisl Biggs-Davison and Chris Alderton, (2019) *Playing with Fire: The Problematic History of Romania's Press and Media and Recent State Corruption*, Centre for Research into Post-Communist Economics, p.9., http://crce.org.uk/briefings/CRCE_Media_in_Romania_January_2019.pdf [accessed 25 January 2020].

⁷ Ibid.

⁸ Ibid.

⁹ The Romania Libera web site is at: <https://romanalibera.ro> [accessed 26 February 2020].

2.2 The Naïve Period

In Romania, this post-revolutionary phase is sometimes described as having been the country's 'naïve period'.¹⁰ While many hoped reforms would herald freedom, economic prosperity and the rule of law, the emergent reality turned out somewhat differently. At a superficial level, Romania looks as if it is a democratic and open society. Many institutions that are found in all developed Western democracies have their equivalents in Romanian society. However, appearances can be deceptive. Despite joining NATO in 2004, and the European Union in 2007, many of the assurances Romania offered co-signatories concerning relevant standards and practices have not been fulfilled. All too often, institutions exist in name only, rather like Potemkin villages. In reality, old structures, networks and ways of working have persisted and continue to work against the country's democratisation. With hindsight it has become clear that many people in the Romanian Communist Party used their access to powerful and strategically placed networks to continue in the same vein as before, taking advantage of existing administrative structures, key competences and old ways of working. Knowing how to organise and run things, many went on to become powerful players in a socio-economic and political landscape that has remained problematic.

It is in this context that the notoriously brutal former secret police service, the Securitate, was not simply closed down (as had initially been hoped) but instead much of its work and personnel were re-organised, re-branded and re-tasked.¹¹ Many of their capabilities and skills went on to find roles in new organisations such as the SRI (domestic intelligence), SIE (foreign intelligence) as well as a wide range of other agencies.¹² In politics, just as many Romanian Communists re-branded themselves as social democrats and/or communitarians (some went onto win elections)¹³, so the SRI became a new, arguably better resourced and just as potent force within the country's statecraft and political economy.¹⁴

However, to promote mutually beneficial development and trade relations, the EU, US, and other allies, encouraged successive Romanian governments to embrace western standards and practices in key areas such as rule of law and the fight against corruption. Desiring acceptance and cooperation within such bodies as the EU and NATO, leading Romanian politicians not only talked tough on the rule of law and anti-corruption but they also set about establishing a range of organisations that appeared to offer positive change. It was in this context that the National Anticorruption Directorate (DNA) was formed in 2002 to lead the fight against corruption and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) was formed in 2003 to lead the fight against organised crime and terrorism.

¹⁰ Lisl Biggs-Davison and Chris Alderton, *op.cit.*, p.9.

¹¹ For a detailed introduction and overview see: Oliver Pahnecke, (2019) 'From the Judiciary in Romania to the EPPO in Brussels – The Tactical Field of the Romanian Secret Service: How the Romanian National Anti-corruption Directorate (DNA) and the Romanian Intelligence Service (SRI) Manipulated the judiciary in order to obtain desired sentences and the implications of this collaboration for Romania and the European Union', Human Rights Without Frontiers International, Brussels. It is online at: <https://hrwf.eu/wp-content/uploads/2019/09/From-the-Judiciary-in-Romania-to-the-EPPO-in-Brussels---The-Tactical-Field-of-the-Romanian-Secret-Service-1-2.pdf> [accessed 14 February 2020]. Also, see: V G Baleanu, (1995) *The Enemy Within: The Romanian Intelligence Service in Transition*, online at <https://fas.org/irp/world/romania/g43.html> [accessed 4 February 2020].

¹² Pahnecke, *Ibid.*

¹³ Romania's political parties are so riven with the practice of "party hopping", that it has even been given the name: *traseism*. *Traseism* is the practice whereby elected MPs, senators, civil servants and/or functionaries shift their allegiance to a new party or leader regardless of their previous position. The most illustrious careers can be found among a range of Romanian politicians who have indulge in this practice.

¹⁴ Tom Gallagher, *op cit.*

2.3 Reality Starts to Dawn

While press and media coverage both in and outside Romania were almost universally welcoming of these developments, it was not long before questions started to be raised concerning their efficacy and approach, particularly in relation to the DNA. In 2013, Laura Kövesi took over as the DNA's Chief Prosecutor. Going out of her way to court western media and opinion she was rapidly being internationally feted for being one of Europe's most effective anti-corruption operatives. While many lauded Kövesi's DNA for their remarkably high levels of success, other informed voices remained quietly sceptical.¹⁵ Back in 2016, David Clark, a former Foreign and Commonwealth Office special adviser and expert on Eastern Europe, said:

"The conviction rate in cases prosecuted by the DNA is a staggering 92% and the agency has a bureaucratic interest in making sure it stays that way. This can only be achieved if the scales of justice are tipped heavily in its favour and the court system functions on a presumption of guilt. To that end, the DNA uses various tactics of intimidation and incorporation to ensure that judges co-operate in keeping the conviction rate as high as possible".¹⁶

During Christmas 2016 and early 2017, Sebastian Ghita (a former Romanian IT entrepreneur, media owner and Member of Parliament) released a series of videos on his national television channel: *Romania TV*. Over the course of several programmes he announced that he had previously been an associate of the former deputy head of the SRI, Florin Coldea, as well as Kövesi at the DNA. Significantly, Ghita revealed that Kövesi's appointment at the DNA had itself been facilitated by corruption.¹⁷ He explained that the then former Romanian Prime Minister, Victor Ponta, had been threatened with blackmail if he did not approve Kövesi's appointment and that she and the DNA worked inappropriately with the SRI.¹⁸ Ghita went on to reveal that he had co-operated with Kövesi in order to bring down another media owner Sorin Ovidiu Vantu and forcibly rest from his control *Realitatea TV*.¹⁹

While back in 2015, Ghita was charged by the DNA for money laundering, tax evasion and the embezzlement of EU funds, he also revealed that his downfall had actually been orchestrated because of his unwillingness to hand over control of *Romania TV* to a network of people that included Coldea and Kövesi.²⁰ He explained that other media owners such as Adrian Sarbu, Dan Voiculescu and Dan Adamescu had also been framed in a wide-ranging operation against dozens of Romanian media owners and entrepreneurs.²¹ Castigating Coldea and Kövesi for presiding over a 'cult of fear', '*Ghita-Gate*' as it became known, had a huge impact on Romanian opinion formers, citizens and Members of Parliament. Echoing similar accusations made by the UK's former Chief of MI6, Sir John Scarlet,²² against the SRI and DNA, Coldea was swiftly suspended from office pending investigation.

¹⁵ David Clark, 'Romania's corruption fight is a smokescreen to weaken its democracy' *The Guardian*, 10 January 2017: <https://www.theguardian.com/world/2017/jan/10/romania-corruption-fight-is-a-smokescreen-to-weaken-its-democracy> [accessed on 7 February 2020]. Also see:

¹⁶ David Clark, (2017) *Fighting Corruption with Con Tricks: Romania's Assault on the Rule of Law*, The Henry Jackson Society, London, p.19; available online at: <http://henryjacksonsociety.org/wp-content/uploads/2017/01/Romania-paper.pdf> [accessed online 20 January 2020].

¹⁷ Lisl Biggs Davison and Chris Alderton, *op cit*, pp20-21.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² See: <https://www.telegraph.co.uk/news/2016/12/13/european-arrest-warrant-targeting-innocent-british-resident/> [accessed 26 January 2020]. Also see: <https://www.dailymail.co.uk/news/article-5346645/How-EU-nation-exploits-Brussels-law-dirty-work.html> [accessed 29 January 2020].

Ghita's revelations put Kövesi under huge pressure and while she initially sought to dismiss them, when subsequent recordings concerning her activities came to light not only was she removed from her office at the DNA by court order but a former senior SRI officer went public to reveal the full scale of the SRI's and DNA's illegal activities.²³ Lt Col Daniel Dragomir went public in Brussels,²⁴ London and Bucharest to reveal details the SRI's and DNA's unlawful and unconstitutional activities concerning key areas of Romanian society including the press, media and judiciary.

Following a thorough investigation, Romania's Constitutional Court vindicated these whistleblowers.²⁵ In January 2019, the Constitutional Court concluded that between 2009 and 2016 hundreds of unconstitutional 'secret protocols' had existed and been used between the General Prosecutor's office and the intelligence service (SRI). Initially, the protocols had been identified by a committee of the Romanian parliament. Of the 565 they identified, 337 remain in force. As such, the vast majority of protocols has not been made public and are kept hidden by the SRI despite requests by the Supreme Council of Magistrates to make them available to public scrutiny.

To ordinary Romanians, the Constitutional Court's decision not only highlighted the ongoing power of an active and deep state but it further undermined their hopes that it had been precluded from interfering and tampering with the justice system and those institutions so necessary in a free and open society. Parallel revelations by a Romanian special Parliamentary Committee investigating these matters also concluded that the SRI had used a vast array of secret protocols to act unconstitutionally.²⁶ They concluded that the DNA was merely a front for what were essentially SRI operations. The relationships promoted by the protocols meant that far from adhering to due process and the rule of law, individuals were instead arbitrarily charged, arrested, detained, imprisoned and reputationally ruined. As was pointed out by numerous commentators, combined, these revelations set Romania apart. Not only was Romania's propagandistic veneer tarnishing badly but as one seasoned commentator in Brussels pointed out:

"No other EU member state allows their intelligence services to operate this way, which is essentially a parallel justice system existing outside the rules imposed by Romania's constitution."²⁷

In reality, many people within the Romanian judiciary had previously repeatedly warned that inappropriate interference by the secret state was widespread. In reaction to the revelations concerning the protocols, the National Union of Romanian Judges²⁸ publicly restated that the rule of law is "incompatible with the administration of justice based on secret acts".²⁹ While the scale of the revelations pointed to widespread and organic rule breaking, Romania's international reputation was damaged. Having put so much faith in Kövesi, the DNA, and their long heralded anti-corruption fight, suddenly, international newspapers had to face the stark reality that the country's anti-

²³ See EU Reporter video interview with Lt Daniel Dragomir:

<https://www.youtube.com/watch?v=DXn0lc9uVik&feature=share> [accessed 2 February 2020].

²⁴ <https://www.eureporter.co/frontpage/2019/01/18/romania-secret-protocols-between-intelligence-services-and-prosecutors-ruled-unconstitutional-sri/> [accessed 18 February 2020].

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ For evidence produced by the National Union of Romanian Judges see:

https://medelnet.eu/images/2018/Romanian_Judges_Union_-_Report_on_the_unlawful_involvement_of_the_Romanian_secret_intelligence_agencies_through_secret_protocols_in_the_Romanian_judiciary_system.pdf [accessed 9 January 2020].

²⁹ See: <https://www.eureporter.co/frontpage/2019/01/18/romania-secret-protocols-between-intelligence-services-and-prosecutors-ruled-unconstitutional-sri/> [accessed 9 January 2020].

corruption fight had itself been corrupted and was in many ways unconstitutional.³⁰ Following Ghita's revelations and the Constitutional Court's ruling, the EU Reporter concluded:

*"Recent tapes that became public in Romania show prosecutors from the National Anti-Corruption Directorate, one of the agencies that had secret protocol arrangements with the intelligence services, openly inventing and creating files against judges that were expected to rule against the wishes of the DNA or intelligence services."*³¹

Mindful of the implications of the Constitutional Court's ruling for thousands of previous investigations and court cases, one Bucharest lawyer concluded in the *EU Reporter*:

*"This is nuclear. Can you imagine how many cases were conducted under these protocols and how many people might be imprisoned as a result of being targeted under these protocols? The existence of the protocols already rocked many people's faith in the Romanian justice system. Now the Constitutional Court ruling confirms that fear as being completely justified."*³²

2.4 Back to the Future

From the evidence available, it is clear that the DNA and SRI used the pretence of anti-corruption to cover up their own corrupting and unconstitutional acts. Unscrupulously targeting journalists, judges, media owners, entrepreneurs and politicians at local and national level, the DNA-SRI nexus³³ not only undermined due process but they actively fabricated and falsified much of their evidence to obtain results that would in turn be propagandistically trumpeted internationally.³⁴

Today, it is clear that there has not only been SRI infiltration, influence and manipulation of key parts of the judiciary but key people such as the SRI's legal director, General Dumbrava, have even gone on the public record to argue that the SRI must not "withdraw from the tactical field once...[an] indictment [is] presented to the court". Ominously, Dumbrava confirmed his view that the SRI should maintain its "interest until the final resolution of every case is reached".

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ For more on this see the following: <https://www.euractiv.com/section/justice-home-affairs/opinion/romanas-anti-corruption-services-are-reminiscent-of-securitate/> [accessed 19 January 2020]; https://adevarul.ro/news/eveniment/raport-the-henry-jackson-society-serviciile-secrete-submineaza-independenta-justitiei-romania-1_586ebb2f5ab6550cb81dfe23/index.html [accessed 19 January 2020]; <https://www.thetimes.co.uk/article/be524baa-ed46-11e6-8d68-d0e249a86942> [accessed 20 January 2020]; <https://www.newstatesman.com/politics/staggers/2017/02/why-corruption-number-one-political-issue-romania> [accessed 29 January 2020]; <https://www.csce.gov/international-impact/events/romanian-anti-corruption-process-successes-and-excesses> [accessed 15 February 2020]; <https://www.youtube.com/watch?v=ijbilPHKyDI&feature=share> [accessed 18 February 2020]; <https://www.eureporter.co/frontpage/2018/06/12/a-window-of-opportunity-for-romanas-corrupt-justice-system/> [accessed 22 February 2020]; <https://www.eureporter.co/frontpage/2019/07/16/case-against-romanianintelligenceservices-strengthens/>.

³⁴ See: <https://www.luju.ro/high-court-under-dna-sri-terror-two-thirds-of-iccj-judges-had-fabricated-files-at-the-dna-more-than-75-high-court-judges-were-targeted-about-100-judges-from-the-bucharest-court-of-appeal-were-targeted-by-dna-the-scm-confirms-the-involvement-of-the-sri-in> {accessed 20 February 2020}. For more on this subject also see: <https://www.newstatesman.com/world/europe/2018/03/battle-clean-romanian-politics-has-long-way-run> [accessed 12 February 2020]; <https://www.youtube.com/watch?v=yCfdi8Fy2a0&feature=share> [accessed 9 February 2020]; <https://www.youtube.com/watch?v=DXn0Ic9uVlk&feature=share> [accessed 12 February 2020]; <https://www.conservativehome.com/platform/2018/05/damien-phillips-we-must-not-ignore-the-growing-threat-from-romanas-secret-state.html> [accessed 19 February 2020]; <https://www.neweurope.eu/article/looking-romanian-justice-in-the-eyes/> [accessed 20 February 2020].

In his seminal report, *The Tactical Field: How the Romanian National Anti-Corruption Directorate (DNA) and the secret service (SRI) manipulated the judiciary in order to obtain desired sentences and the implications of this collaboration*,³⁵ the academic writer Oliver Pahnecke argues that for Romania to fight corruption effectively, its processes and practices have to regain legitimacy. Concerning the activities of the SRI and DNA, he asserts:

*“Romanian law requires a prosecutor to collect evidence for both prosecution and defence as the purpose of the criminal investigation is to find the truth. In order to achieve that goal, the prosecutor has to be independent. But this requirement is clearly not fulfilled by a secret service agent under military orders. It is hard to talk about equality of arms and a fair trial when SRI has full control over the servers recording the conversations and when it is able to manipulate or hide exculpatory evidence. Collecting intelligence is also fundamentally different from collecting evidence in a criminal case which must meet certain criteria to be admissible in courts. Collecting intelligence is done in secrecy, sometimes at the brink of legality. Collecting evidence, on the other side, must be done according to the rules and procedures of a criminal investigation. Justice must be carried out in the name of law, not some secret orders”.*³⁶

Importantly, Pahnecke concludes:

*“Legalizing corruption or the collusion of secret services and prosecution are two sides of the same coin. This will almost certainly lead to covert structures open to abuse for any government to come. Declassification and independence of the judiciary are the only alternative. This approach might not lead to spectacular arrests and could lead to the occasional acquittal for lack of evidence. But the possibility of acquitting a defendant with a “not proven verdict” is the result of the core principle that everyone charged with a criminal offence shall be presumed innocent until proven guilty, as Article 6 paragraph 2 of the European Convention on Human Rights determines. This principle is paramount for a democratic society based on the rule of law. Making certain a trial ends with the desired verdict means someone decides outside of the law”.*³⁷

2.5 Lifting the Veil

In 2019, Due Process, a campaign group dedicated to reforming the European Arrest Warrant, published a comparative analysis which presented data showing “Romania to be by far the worst violator of human rights within the EU”.³⁸ The report stated:

*“With a total of 272 violations of human rights found by the ECtHR from 2014 to 2017, Romania had over 100 more judgements against it than the next worst country in the EU.... The vast majority of Romania’s violations were under Article 3 and Article 6 of the ECHR (238 of the 272)”.*³⁹

Presenting a contextualised statistical overview, the report also pointed out that:

“In terms of inhuman or degrading treatment, Romania ranks consistently behind only Russia in the Council of Europe. For violating the right to a fair trial, the only worst offenders among

³⁵ Oliver Pahnecke, op cit.

³⁶ Ibid, p13.

³⁷ Ibid.

³⁸ See: <http://dueprocess.org.uk/wp-content/uploads/2018/08/Due-Process-Human-Rights-abuses-in-European-Arrest-Warrant-member-states.pdf> [accessed 18 February 2020].

³⁹ Ibid., p3.

*the 47 Council of Europe members are Russia and Turkey. Of the 104 violations found in Romania by the ECtHR for inhuman or degrading treatment, the vast majority occurred in detention. The ECtHR has consistently found that Romanian prisons are overcrowded, with space far below the legally required minimum per person”.*⁴⁰

Moreover, going on to focus on what many now believe to be the most degrading and abusive prison regime in Europe, the report concludes:

*“In Romania, case after case has brought disgusting prison conditions to light; with infestations of bed bugs and vermin, inadequate washing facilities for prisoners, and cold, damp, dirty cells being the norm. Though the ECtHR has censured Romania for these violations over successive years, the country has not taken sufficient action to bring its prisons up to standard and so violations continue unabated”.*⁴¹

In recent years, Romania’s prison conditions have become increasingly concerning to the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴². Following a detailed investigation, the committee stated:

*“The conditions discovered by the CPT team fall far below expected European standards for the treatment of prisoners and include attacks by masked intervention groups, violence, lack of healthcare and severe overcrowding”*⁴³.

Moreover, British barrister, Ben Keith, who specialises in extradition and human rights has pointed out repeatedly that assurances given by the Romanian authorities to UK courts have normally been ignored:

*“When I first began challenging Romanian prison condition cases, it was clear that inmates often did not have a bed; or if they did, they had no space to get off it. Locked in a cell for 23 hours a day, unable to exercise, using a hole in the corner of the cell as a toilet, conditions were horrific. Promises were made that conditions would improve, and assurances were provided that the human rights of those extradited would be respected. Our courts believed them, and the cases were lost. It rapidly transpired that the truth about the conditions was not being told. Clients contacted me to say that, in spite of the assurances, they were in appalling conditions”*⁴⁴.

Mindful of the state of Romanian prisons, human rights, legal assurances and the UK’s exit from the European Union, Due Process issued a strongly worded statement. It concluded that the situation was so bad in Romania:

*“...the UK should halt extraditions to the EU’s leading human rights and due process abusers; top of the list being Romania...”*⁴⁵

⁴⁰ Ibid., p22.

⁴¹ Ibid.

⁴² See: <https://www.eupoliticalreport.eu/inside-romanias-prisons-masked-intervention-groups-overcrowding-and-violence/> [accessed 20 February 2020].

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ For the full report see: <http://dueprocess.org.uk/wp-content/uploads/2018/10/Why-the-UK-must-halt-extraditions-to-Romania.pdf> [accessed 19 January 2020].

While Romania has been repeatedly warned by a myriad of international observers that parlous prison conditions are unacceptable and only serve to compound reputational damage, all too often, Romanian politicians and officials have either lied, obfuscated or simply ignored the situation. While in 2016, Justice Minister Raluca Pruna went to Brussels promising institutional reform and an investment in substantive prison reform worth 1 billion Euros, upon returning to Bucharest, a scandal broke in the media when a recording was broadcast of her claiming she had simply lied and that nothing would change. There would be no 1 billion Euros invested in Romania's prisons.⁴⁶

In the putatively post-totalitarian era, Romanians know that their country not only remains corrupt but that the SRI remains a powerful and dangerous force. They know that the judiciary is tainted, that the rule of law is often non-existent, and that the wider political system has never achieved a fundamental break with the past. It is this lack of effective transition to a genuinely new order and something different that has also bled into Romania's parlous record with everything from emigration and the economy, to infrastructure and governance.

According to the Organisation for Economic Co-operation and Development, Romania's emigrant population increased from 2.3million people in 2001-2 to 3.5 million people in 2015-16.⁴⁷ As Romanians gained increased access to mobility opportunities, nearly 20 percent of the population simply left the country.⁴⁸ As more Romanians moved to other countries, including many in Western Europe, so the country's population fell from 22.4 million in 2000, to just 19.5 million in 2018.⁴⁹ Heralding the highest emigration rate among the ten main origin countries of emigrants living in one of the 36 OECD countries,⁵⁰ such a shift not only represents a major social and economic challenge but it denotes a huge loss of talent. The OECD shows that there remain high emigration intentions amongst Romanians, especially those young people still in the country:

*"Between 2009 and 2018, more than a fourth (26 percent) of Romanians living in Romania expressed a desire to permanently settle abroad if they had the opportunity..."*⁵¹

Moreover:

*"...nearly half of people aged 15-24 [said] they intended to leave the country"*⁵²

With so much talent having left the country and more reporting their intentions to do so, Price Waterhouse Coopers recently concluded that:

*"The difficulty of hiring skilled employees generates economic losses to private businesses in Romania worth about 6% of the gross domestic product (GDP)"*⁵³

⁴⁶ For more on this incident see: <https://globalriskinsights.com/2016/10/romanias-justice-minister-lies-to-court/> [accessed 24 January 2020].

⁴⁷ See: <https://business-review.eu/news/romanias-emigrant-population-is-the-fifth-largest-in-the-world-and-growing-oced-report-finds-203223> [accessed 20 February 2020].

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ See: <https://www.romania-insider.com/pwc-romania-skills-shortage> [accessed 19 February 2020]

Economically, the loss of GDP through skills shortages is further compounded by Romania's parlous record with infrastructure. By 2019, the situation had become so bad that one Romanian entrepreneur hit global headlines when he built a one-metre-long stretch of motorway in protest at the country's poor highway infrastructure. As the BBC reported at the time:

"Fed up with the sparse motorway network...Stefan Mandachi, a 33-year old who owns a chain of fast-food restaurants, privately commissioned the tiny motorway at a personal cost of £3,800".⁵⁴

The BBC report continues:

"...situated on a plot of land he owns next to a busy main road, [it] was symbolically built in Suceava, a city in a part of the country that has no stretches of motorway at all".⁵⁵

In pointing out Romania's parlous transport infrastructure, the report concludes:

"Romania has one of the shortest motorway networks in the European Union, with just 806km (500 miles) throughout the whole country. This despite having a land mass almost equal to that of the UK".⁵⁶

According to Ionut Ciurea, the director of the Pro Infrastructure Association, a Romanian NGO that monitors motorway projects:

"More and more people in Romania – normal, everyday citizens – are starting to get agitated...Politicians come to power and say they'll build 1,000km of motorways in five years. It's not possible even with the best technical capacity from everybody involved".⁵⁷

According to Mr Ciurea, poor roads cost Romania's economy billions every year:

"We estimate that around 2% of Romania's GDP is lost on road access...That's huge".⁵⁸

In reality, many projects in Romania have been engulfed in a ceaseless mire of corruption and scandal. For example, in 2016, a new motorway in southern Transylvania rapidly became known as the 'highway of shame'. The project had become so plagued with corruption that it the road was inaugurated twice because it needed almost instant repair. It was subsequently demolished a year later after its safety issues proved irredeemable⁵⁹.

Not surprisingly Romania has the highest rate of road deaths in the EU. In 2017, the country recorded 98 deaths per million inhabitants due to road accidents. Not only does this represent double the EU average, and more than three times that of the UK, but as Mr Mandachi pointed out:

"More people die each year than those who died in the 1989 revolution".⁶⁰

⁵⁴ See: <https://www.bbc.co.uk/news/world-europe-47582694> [accessed 8 January 2020].

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

Meanwhile, Razvan Cuc, the Romanian minister of transport was swift to declare Mr Mandachi's one-meter motorway illegal "due to a lack of permits".⁶¹ Shortly before Mr Mandachi's media stunt, the minister had travelled to the nearby city of Bacau whereupon he announced work would begin on a local motorway. Perhaps understandably Stefan Mandachi concluded:

*"I don't see anything. I don't see a construction site"*⁶².

⁶¹ Ibid.

⁶² Ibid.

3. A Failing State in the European Union?

Technically, a failed state is one in which the political or economic system has become so weak, that the government is no longer in control. It denotes a state that has lost the power to influence or direct people's behaviour or the course of events. While Romania is not necessarily a failed state in the classic or technical sense, its unique mixture of deeply held problems do nevertheless make the following question pertinent: to what extent is Romania operating as a Failing State, or a 'Failing Democracy', in the European Union?

3.1 Thirty Years On

Thirty years on from the end of Ceausescu's Communist regime, Romania disports a unique and wide-ranging combination of failings that combined present a huge challenge within the country and for the rest of the EU. From the available evidence, it is clear that Romanian statecraft remains riven with systemic failings not least in the core areas of legitimacy and governance. Thirty years on from the end of communism, Romania is a country that continues to have manifest problems with due process and the rule of law.

Key institutions within the intelligence community have not only behaved unconstitutionally but they have flouted European norms and standards on a massive scale. In 2020, Romania remains a country in which its showpiece national anti-corruption agency, the DNA, has itself not only used forgery, fabrication and intimidation against those it has often arbitrarily singled out for targeting⁶³ but it has been used as a proxy for the domestic intelligence service, SRI, who have themselves purposefully undermined the judiciary by using widespread and unconstitutional infiltration, influence and intimidation.⁶⁴

Today, Romania maintains the worst humans rights record in the EU. It has the worst prison conditions and continuously breaches assurances of good treatment offered to foreign courts. Riven with corruption, violence, degrading treatment and inhumane conditions, the system's checks and balances are virtually non-existent. In the context of the EU, Romania is kind of modern-day Potemkin village.⁶⁵ For too long it has relied on propaganda, obfuscation and lies. When it comes to statecraft it is no longer able to build trusted or sustainable relationships. Its governance, legitimacy and record lay in tatters.⁶⁶

Romania's failings have not only damaged its economy, but it has damaged trust, reputation and culture. Bad practice, low trust, and poor performance not only abound across much of the state's underlying institutional architecture but its impact bleeds on out into wider areas of the economy and society. Faced with arbitrary authoritarianism, interventionism and incompetence, talent has fled, infrastructure has been voided and the country finds itself in a cyclical vortex from which it is increasingly difficult to break free.⁶⁷

⁶³ For more on this see: <http://www.better-governance.org/home/index.php/news/entry/european-parliament-round-table-hosted-by-norica-nicolai-mep-on-the-reform-of-the-law-and-justice-system-in-romania-with-daniel-dragomir> [accessed 8 January 2020].

⁶⁴ See: <https://intpolicydigest.org/2019/02/19/romania-s-former-anti-corruption-superstar-now-being-targeted/> [accessed 14 December 2019].

⁶⁵ See: <https://intpolicydigest.org/2018/08/23/romania-s-long-road-to-justice/> [accessed 10 January 2020].

⁶⁶ For example, see this report from the UK centre-left think tank, the Fabian Society: <https://fabians.org.uk/wp-content/uploads/2018/11/Fabian-Society-A-Warranted-Response-WEB-FINAL.pdf> [accessed 15 January 2020].

⁶⁷ Some commentators argue that the situation is so bad the EU cannot afford to acknowledge the reality: <https://www.eureporter.co/frontpage/2018/12/05/european-commission-refuses-to-face-up-to-the-truth-about-romania/> [accessed 15 January 2020].

In recent years, there is evidence to suggest that the SRI-DNA nexus has become so powerful and threatening to the rule of law (and people's innate sense of justice), that organisations across the public and private sectors have stopped planning and initiating all manner of much needed investments and works. As under communism, the dead hand of the arbitrary and authoritarian state counterproductively stifles entrepreneurship, creativity and trust: those vital ingredients necessary to advance a thriving, open society.

Today, Romania's population is both shrinking and aging. Its income inequalities are among the highest in the EU and one-third of the population lives in poverty⁶⁸. Millions of Romanians still have insufficient access to healthcare or even basic amenities such as indoor plumbing.⁶⁹ It is against this backdrop that in 2019 the European Commission finally acknowledged that:

*"Investor confidence is being eroded by persistent legislative instability, unpredictable decision making, low institutional quality and the continued weakening of the fight against corruption".*⁷⁰

However, having been repeatedly warned over the years by international NGOs and observers that the DNA-SRI nexus was unjust, counter-productive and therefore ultimately unsustainable, the EU continues to find it difficult to acknowledge openly the full significance of these failings or accept the threat they pose to the Romania's economy – not to mention the rest of the EU. While in some Romanian courts legal cases brought by the DNA have started to collapse, and previous judgements have been overturned, the best the EU does is to fleetingly and begrudgingly reference such uncomfortable realities. This point is powerfully made by Oliver Pahnecke who asserts:

*"The chain of events over the past years shows that Romania's internal secret service, SRI, is active in the country's judiciary, even if the Commission of the European Union is steadfast in its will to ignore this. Ever since Romania's accession to the European Union in 2007, the Commission publishes progress reports for the Cooperation and Verifications Mechanism that is supposed to help and control the improvement of the judicial reforms and the fight against corruption without ever mentioning SRI activity in the judiciary – despite the fact that the former president of the Romanian Constitutional Court, Augustin Zegrean, publicly declared the Constitutional Court's judges were threatened by SRI and one of his colleagues even reported to the EU Commission's officers responsible for the Cooperation and Verification Mechanism during their country visit that he was "afraid to be a judge at this court"".*⁷¹

⁶⁸ For an introductory overview see: <https://uk.reuters.com/article/uk-romania-economy-profile-analysis/romanias-growing-pains-just-keep-coming-back-idUKKCN1R8192> [accessed 14 January 2020].

⁶⁹ Ibid.

⁷⁰ See: <https://www.reuters.com/article/us-romania-economy-profile-analysis/romanias-growing-pains-just-keep-coming-back-idUSKCN1R818L> [accessed 9 March 2020].

⁷¹ Oliver Pahnecke, op cit., p2. Also see: Gidei, Mihaela, Augustin Zegrean, amintiri de pe vremea când Toni Greblă a fost dus la DNA: L-am chemat pe Iohannis în CCR și ne-am exprimat teama, Mediafax, Bucharest, 10 May 2018, referring to incidents from 2015, see also Bogdan, Gabriela, Former CCR judge Toni Grebla, acquitted by the Supreme Court in the case related to the ostrich farm. Grebla: Judges are proving that they judge by evidence, not by targets established by SRI and DNA, Nine O' Clock, Bucharest, Romania, 14 May 2018.

3.2 Time to Get Real

For too long, the EU, US and UK have either believed Romanian propaganda or they have defaulted to denial.⁷² Preferring instead a state of mind that either hopes something bad cannot be true or, if it is, that it will somehow go away.

With Romania such magical thinking is not only dangerous, it flies in the face of Romania's own Constitutional Court which has found against the SRI and DNA's ways of working. An event that journalist Damien Phillips described as being: "the largest 'spy corruption scandal' anywhere in post-Soviet Eastern Europe".⁷³ For Phillips, the risks of inaction and denial could not be clearer:

"A dark and insidious authoritarianism is creeping across the EU, with control becoming ever more centralised and abuses of power occurring at every level of government in many EU states... Late last month, Romania's Constitutional Court lifted the lid... expos[ing] hundreds of secret and highly illegal 'protocols' between Romania's intelligence service (SRI), its National Anti-Corruption Directorate (DNA – whose work has been unconditionally lauded by the EU), and every single branch of the government. The ruling demonstrates the painful truth that 30 years on from the fall of communism, Romania is still a police state where power lies in the hands of shadowy and feared intelligence operatives".⁷⁴

Phillips continued:

"Those brave enough to stand against it provide an alarming insight into the scale of the abuse. It is estimated that six million people have been placed under surveillance by the SRI and the DNA. One in every three Romanians has been subjected to wiretaps, ambient recordings, hidden cameras and microphones in their home, stakeouts and being tailed. Much like its predecessor the 'Securitate', the malevolent secret police of the Soviet era, the SRI has transformed itself into a criminal investigation body that controls inquiries by prosecutors, censors' evidence in case files, and convicts on the basis of classified information that it doesn't share with defendants or their lawyers".⁷⁵

Powerfully, Phillips concludes:

"Having achieved conviction rates in excess of 92 per cent through the manipulation and blackmail of the judiciary, no area of life in modern Romania has been left untouched by the criminal acts of their out of control intelligence and law enforcement community".⁷⁶

⁷² While also there remains a third possibility, whereby these polities have approved or foolishly cooperated with the SRI-DNA nexus, on the key point here see:

<https://www.eureporter.co/frontpage/2018/12/05/european-commission-refuses-to-face-up-to-the-truth-about-romania/> [accessed 2 March 2020]. Again, from a UK perspective also see: <https://www.telegraph.co.uk/politics/2019/02/08/no-deal-brex-it-safest-option-escape-eu-police-state/#comments> and <https://commentcentral.co.uk/britains-leadership-crisis-pales-in-comparison-to-the-eus/?fbclid=IwAR1jCQg8PuDBHxPdZK00fanNiccDtWkKzHskeShshGeHHLgZe3r1zmpCjho> [accessed 4 March 2020].

⁷³ See: <https://www.telegraph.co.uk/politics/2019/02/08/no-deal-brex-it-safest-option-escape-eu-police-state/> [accessed 4 December 2019].

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

4. Conclusion – Reflections on the Dark Side of Romania’s Revolution that Never Quite Was

Given the evidence available concerning Romania’s journey since December 1989, this report concludes with two key points before going on to present a series of recommendation from an international perspective.

First, Romania’s transition over the last thirty years remains far from complete. Indeed, too much of its journey to freedom, democracy and the rule of law has been still born. Given the parlous state of law, the economy and so much of society, its post-communist journey should not be accorded the status of a meaningful revolution. Instead, unlike elsewhere in Central and Eastern Europe, this was a revolution that never quite was.

Second, Romania is today at serious risk of being locked into a vortex of failure in terms of basic statecraft. Thirty years on from the end of communism, the country has manifest problems with due process and the rule of law. Key institutions within the intelligence community have not only behaved unconstitutionally but they have flouted European norms and standards on a massive scale. Romania maintains the worst human rights record in the EU and it has the worst prison conditions. Riven with corruption, violence, degrading treatment and inhumane conditions, internationally, its core state has been allowed to get away with propaganda, obfuscation and lies.⁷⁷ To make matters even worse, the country’s population is shrinking and aging.⁷⁸ Its income inequalities are among the highest in the EU and one-third of the population lives in poverty.⁷⁹ Millions of Romanians still have insufficient access to healthcare or even basic amenities such as indoor plumbing.⁸⁰ All of this, thirty years after a revolution that never quite was.

4.1 Recommendation for an Independent EU Investigation into Romania

Given these painful realities, this report recommends the formal establishment of an Independent EU Investigation into Romania. The EU should organise an independent investigation to examine the extent to which Romania is becoming a Failing State and a Failing Democracy within the EU.

Wary of Romania’s capacity to implement meaningful change and reform on its own, this investigation should be tasked to recommend specific, measurable, attainable, realistic and time bound (SMART) improvements in several pressing areas. As such, it should be led by a respected and independent international panel of experts, tasked collectively to provide recommendations to address the following eight issues at the heart of Romania’s failing status:

- 1) Reform or replace the SRI/DNA nexus and reverse the damage that has been done to the Romanian judiciary and rule of law.
- 2) Protect the EU and other Western partners’ interests from the manifest failings of Romania’s state security apparatus and its record of infiltration and illegality.
- 3) Improve Romania’s poor human rights record and bring an end to violations, in the context of EU and European Council comparisons.

⁷⁷ Also see: <https://www.eureporter.co/world/romania/2018/08/21/romanias-flawed-justice-system-needs-a-radical-solution/> [accessed 29 January 2020]

⁷⁸ For an introductory overview, again, see: <https://uk.reuters.com/article/uk-romania-economy-profile-analysis/romanias-growing-pains-just-keep-coming-back-idUKKCN1R8192> [accessed 19 January 2020]

⁷⁹ Ibid.

⁸⁰ Ibid.

- 4) Improve Romania's prison system and end the systemic violation of human rights within it.
- 5) Protect Romania's press and media independence, not least from the power grabs of senior state security officials and their allies in politics, and promote a thriving free press.
- 6) Facilitate the development and delivery of basic forms of infrastructure, such as motorways, so that Romania can start to resemble other European countries and develop economically.
- 7) Make Romania a more stable, prosperous and attractive place for talent to thrive and prosper.
- 8) Measure and verify actual change and development over and above any wishful thinking by elites in Bucharest, Brussels and further afield.

If such an investigation is not carried out, and substantive reform is not enacted, huge risks to Romania, the EU, and NATO will remain.

In 2020, it is unacceptable that an EU member state has a manifestly corrupt and unconstitutional 'anti-corruption drive', engages in acts of lawfare, has intelligence operatives influence and/or infiltrate various levels of its own judiciary, has some of the worst human rights and prison conditions in the European Council, frequently violates freedom of the press and media, oversees a vast loss of talent, and is seemingly incapable of building basic forms of infrastructure for its own people and their collective futures.

For the sake of the European Union and in the interests of NATO, Romanian realities, implications and remedies need to be urgently sought, detailed and implemented.

4.2 Time to Protect British Interests

While the EU gets to work on resolving the issues that add up to making Romania a failing state, the UK must protect its own interests and limit its exposure. Given the evidence, it is no longer acceptable for the UK to treat Romania as a regular EU member state and must instead act with caution, checking the claims of the Romanian authorities against independent evidence and updating advice to travellers and business investors to reflect the reality on the ground. The serious problems in Romania's criminal justice and prison systems mean it is most urgent that the UK halt extraditions to Romania immediately.