

Hollowing Out Judicial Accountability through Media: Italy and Romania in Comparative Perspective

Ramona Coman

Assistant Professor
Université libre de Bruxelles
Centre d'étude de la vie politique (CEVIPOL)



Cristina Dallara

Assistant professor
Department of Political Science
Faculty of Political Science - Alma Mater Studiorum Bologna

Daniela Piana

Assistant Professor
Department of Political Science
Faculty of Political Science - Alma Mater Studiorum Bologna



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA

Draft version.

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Introduction

In this paper we highlight the main axes of a research project that focuses on the relationship that exists between the so called “judicial activism” and the quality of the Southern European democracies. Many reasons justify our decision of undertaking such an investigation. Empirical research conducted over the last years demonstrated that the judicial systems have become surprisingly important actors in to the governance in all Western and non Western democracies.

Yet, more than in other Western countries, the spectacular growth of the public visibility and political engagement of the courts has become a distinctive feature of Southern and Eastern European democracies. Such a phenomenon has deeply impacted the way democratic processes unfold.

Without necessarily speaking of “judicialization of politics”, yet it is unquestionable that in many democracies that come into light after the Second World War the role of the courts overflowed¹ the boundaries set down into the constitutional provisions as for the separation the branches of the State (Bellamy, 2005). The expansion of the judicial power made a drift into the formal design of the constitutional architecture of the State. In more concrete terms, this phenomenon seems to have a twofold nature: judicial actors are increasingly involved in the public discourse and citizens are increasingly asking judges to perform a restorative role vis-à-vis the morality of their society and their political elite.

However, Southern European democracies exhibit a more intensive expansion of the judicial power than other European democracies do. It is again to the voice of the empirical research that one should leave the floor to tell whether or not this phenomenon affects negatively the quality of the democratic institutions of these countries.

Despite growing bigger, the literature developed on the expansion of the judicial power leaves hanging a number of important questions, among which the way the exercise of this power is framed into the public debate. Difficult to be investigated as it is, this aspect should not be neglected.

¹ The diffusion of the constitutional courts occurred after the Second World War and more recently after the fall of the communist regimes. See on the point, Ginsburg, 2003; Sadurski, 2003 and 2004.

In this paper, keeping on the background the research conducted on the quality of the European democracies and bridging these research with a more specific literature developed about the role of the frames in the political processes (in particular in the media), we address the framing processes of judicial actions onto the public discourse by mean of a comparative analysis, which focuses on two cases of political corruption. They have been brought about by the Italian and the Romanian prosecutorial offices in addressing the political corruption associated with the management of public tenders.

The aim we pursue consists in to consider how media, political and judicial actors engage in framing “to forward a particular interpretation” (Essary, 2007: 512) of cases of political corruption. Using the concept of frame is one analytical way “for sorting out many viewpoints and stances as the objects of inquiry” (Douglas Creed, Langstraat, Scully, 2002: 38). As “a frame serves to attribute responsibility for the issue and to prescribe potential solutions to it” (Douglas Creed, Langstraat, Scully, 2002: 38), our question is how actors frame, make sense, respond to and propose to solve the cases under study. In particular, in this paper we are interested to disclose how media, political and judicial actors refer to those who are supposed to make, promote and enforce legal norms in a democratic regime criticized for high levels of corruption and how different are the frames they evoke in the values they consider as foundational and constitutive of the role performed by judicial actors into a democratic setting. As it will be better explained in the next section, the frames we will find are produced by different actors, judicial, political actors and media as well. A crucial point in our analysis is whether the frames produced by different actors converge or not and in case they do, in which elements they converge.

From an empirical point of view, we selected cases of political corruption because it seems that in this domain judges have major chance to act in an extra-legal way (to cross the borders of the system to which they traditionally belong), to moralize the conduct of political actors. Another criteria used is the temporal proximity. Both cases analysed are occurred in the period 2008-2009 and this helped us in finding data and information on the media. Finally, both cases concern countries of Southern Europe (Italy and Romania). The sources of data for the Italian case are basically collected from four newspapers: “La Repubblica”, “il Corriere della Sera”, “la Stampa” e “il Giornale”. We used the open data-base of the Italian Chamber of Deputies in which all the Italian newspaper are scanned and classified each day. The span of time analysed covers the period from December 18th (the day in which the first article on

the case of Naples appeared) until February 2nd, 2008. The articles were selected using keywords: “appalti Napoli” (public procurements in Naples) and “Napoli” plus “Romeo” (the name of the entrepreneur accused by the prosecutors). For the Romanian case the sources of data are three newspapers: “Cotidianul”, “Evenimentul Zilei” and “Revista 22”. The span of time analysed covers the period from March 1st and April 30, 2009. Other articles were downloaded from the web-site www.ziare.com. The keywords by mean of which the articles have been analysed were: Puiu Popoviciu (the name of the entrepreneur accused by the prosecutors) and the names of the other persons implicated in the enquiry. We took into consideration articles on the same topic published in Romanian and in English in the following newspapers: “Nine O’Clock”, “Adevarul”, “Jurnalul National”. All the articles were gathered by use of electronic press archive.

The paper will develop in the following way. After having described the historical background and the analytical knots left hanging by the current scholarship, we will present our analytical framework and distance ourselves from the main stream. We will then illustrate our comparative strategy and justify methodological choice. We will reconstruct the frames by mean of which of the issues addressed by the two judicial cases – conviction for corruption, performance of the judicial role in the criminal justice field – are represented into the public discourse.²

In the conclusion, we will reconnect the issues addressed in the paper – framing of judicial actors by the media or through the media – with the bulk of the scholarship that has been developed about the role played by the mechanisms of accountability in the governance of a democracy (Schedler, 1999; Schmitter, 2005; O’Donnell, 2005). In doing that, we will offer a new avenue to point at the importance of the cognitive and communicational factors in the construction of the public roles and, consequently, in the creation of favorable conditions for the democratic quality.

Background and Analytical Framework

1. Background

Each democratic system needs to rely onto a mechanism of dispute settlement that fits with the complexity of a poliarchy (Dahl, 1971) and with the equality principle. By

² We will consider only the media as target of public discourse. See herein next paragraph the explanation of the analytical framework.

performing its role, a judge embodies the principles that are at the basis of these mechanisms: it instantiates a type of mechanisms of dispute settlement that are triadic: two parts are taken in front of the bench, where their conflict is assessed on the base of impartial and impersonal rules. Those rules are enforced by the judge (Shapiro, 1981).

All normative orders incorporate a certain degree of semantic indeterminacy (Alexy, 1977; McCormick, 1997). Also legal norms exhibit this same feature and carry with them the seeds of the knots associated with the so called “judicial activism”. A fundamental aspect of all judicial procedures is related to the fact that they are expected – by the parts – to rely strictly and exclusively upon legal norms. In that, law is thought as a separate normative order from politics, toward which it also exercises a permanent function of control and constraint. The functional differentiation of politics from law holds and lasts to the extent that judges – vested with the responsibility of enforcing the law beyond and despite the rationale of politics – do not expand their scope of action and do not invade the terrain of the politics. Partisan and interest-seeking as may be the actions of the politicians, even of those who are loyal once upon a time to their own constituencies, they should not represent a model of action for a judge.

A number of different, but not completely unrelated phenomena modified this traditional situation, which was characterized by a-political (in the sense of non partisan and non interest seeking) judge. First and foremost, the increase of the number, the type and the specialization of the legal norms. As long as the scopes of the action of the State increased over the decades, the need of providing public institutions with norms and regulation increased proportionally. The emergence of supranational institutions, among which the European Union stands out as a unique example of supranational regulation, made the overall situation in which adjudication takes place more complex and more fragmented. Judges have been asked more and more to handle different sources of norms, to develop arguments by shortcutting among different types of laws, national, supranational and sub-national in some cases, to bridge between their legal expertise and the knowledge that is needed to adjudicate in some – increasingly important – cases, that stand across the borders of different legal fields, as labor law, environmental law, etc.

This first disruptive process has been supported – even not intentionally – by a different, but related one, the change of the way representative democracy works. Adjudication takes place within a system, both social and political, with which it has several types of

relationships. One of them may be phrased in terms of mechanisms of accountability. Democratic institutions have been created in order to fill the basic principles of the liberal constitutionalism. Accordingly power should be limited and most important subjected to control. Rulers should thus be held accountable both to the law and to the ultimate holders of power, the citizens.

Recently, advanced democracies went through a comprehensive process of change brought about by the weakening of the political parties and the withdrawing of power and competencies from the legislative arenas. These factors altogether created favorable conditions for a big alteration in the democratic governance. One of the ways this alteration is manifested is the expansion of the judicial power, both of the constitutional courts and the ordinary courts. To put it in simple terms, the more the interpretative, *voir* creative function of the judicial actors expands, the more the judges are shifting from an executive role – the application of the law – to a role that is involved in the political processes. The more creative, the broader is the scope of the discretionary decisions taken by judges. As discretionary decisions are tied intimately with the indeterminacy of norms, in order to be able to take a decision, an actor needs to rely on general principles and values that help him to orient his choice. These values, which were derived exclusively from the law in the traditional view of the constitutional State, have been multiple and variegated as they started to include extra-legal values, as for instance moral values (Cotterrell, 2006; Priban, 2007).

Even though things may be substantially more complex, the simple fact that the scope of the judicial action expands entails a considerable change in the overall balance that should exist – and as a matter of fact existed so far – among the branches of the State. This dilemma has been harshly raised and reframed in several ways by the scholars that studied the role performed by the mechanism of the of the judicial review into a democratic regime. Judicial review is an instrument used or possibly used to check and eventually limit the legislative power of the parliament (Zurn, 2007). It has been thought – and accordingly criticized – as an anti-majoritarian instrument. However, from a different perspective, scholars concerned by the possible tyrannical power of the democratic majority, welcome the judicial review of the statutes and of the regulative acts as the ultimate resort of the minority against the power handled by the majority.

Much less attention has been devoted to the impact the expansion of the power of the ordinary courts has on the institutional setting of the advanced democracies. Surely the

concept of judicialization gained legitimacy into the sociological and socio-legal field to refer to the expansion of the role performed by judicial actors into the Western democracies (Commaille, Dumoulin, 2007). This debate unfolded the logics of action of the constitutional courts, but did not develop any comparative study on the way the system of the court impacts the governance of the Western European democracies.

This nonetheless, few scholars pointed out some elements that turn out important for our analysis. One of them is unquestionably the importance of the group of reference in the policy formulation and agenda setting of the judicial institutions. Working on the so called “legal complex”, the assemblages of the patterns of interaction that take place among legal experts, judicial actors, and lawyers, these scholars proved the existence of a correlation between the way the role of the judicial actors is performed and the dynamics of the legal complex (Halliday and Karpik, 1987; Feeley, Halliday and Karpik, 2007).³ However, even if we can draw some clues from this study, the surrounding role played by cognitive factors in constituting a public role, and by extension, the judicial roles are almost neglected. Yet, the social representation of a public role is of utmost importance as for its legitimacy and its performance. In particular, as social psychologists showed in many different research experiences, the collective representation shared by the group to which an actor belongs or wishes to belong, determines the boundaries and the scope of the action such an actor may be willing of pursuing. None of these considerations have never received systematic attention in the study of the impact the judicial activism has on the governance of a democratic political system.

These are the principal reasons we put forth to justify the decision of going back to the analytical framework commonly used to look at the expansion of the judicial power. We are strongly convinced that only empirical research may tell what normative theories of law and politics have simply advocated or alarmingly condemned. The goal pursued in this article is then twofold in its own nature. It consists first into revising the framework with which the expansion of the judicial power has been studied so far by contemplating on the top of other facilitating conditions also the role of the media and by framing these factors altogether into the empirical analysis of the quality of the democracies. Second it wants to unfold the relative weight gained by cognitive and communicative factors into the expansion of the judicial power.

³ The legal complex is a concept that refers to a meso level of the social reality.

2. Beyond the reification of the “activism”

As soon as one has a close look on the scholarship developed so far on the topic that is concerning us here, it would be inevitable to recognize the existence of a dominant, main streaming view, which pivots onto the concept of judicial activism.

The concept of judicial activism has early been introduced to refer to the behavioral patterns followed by American judges appointed at the US Supreme court in the field of the constitutional interpretation. Mainly it was to indicate the tendency of these judges to overcome the literal meaning of the constitutional provisions and to expand the signification of the rights entrenched into the American constitution. Later on, its meaning has been expanded to include the increase of the scope of actions brought about by judicial actors. Judicial activism is therefore one face of a phenomenon, whose second face consists into the imbrications of justice administration and politics. The concept of judicial activism refers to the actor-side of the phenomenon, whereas the concept judicialization of politics refers mostly to its systemic side.

The semantic of the concept of judicial activism turns out, after decades of use – and somehow misuse – extremely multiple and controversial. Judicial activism is used to describe different effects of different factors and forces working out the expansion of the judicial power in a number of different ways in different countries. It has become therefore a sort of “catching all concept”, stretched to the extreme between the needs of giving a proper account of the American judicial system and of the positive and the negative developments of the European judicial institutions. Normative and evaluative connotations have never been cleaned out entirely from the concept.

For the sake of our argument we may then want to pick up few of the numerous aspects that relate more or less directly with the role media have in the expansion of the judicial power manifestly exhibited by the majority of the advanced democracies and as we said by all Southern and Eastern European democracies. The point we want to make here is mostly about the signification that the judicial activist behaviors may have from the point of view of the democratic governance. However, given the complexity and the non linear character of the relationship that relates the quality of the democratic governance with the variation of the degree to which judicial actors expand the scope of their actions, we will start by delimiting the analytical framework and pivoting our reasoning on the following points:

- 1) The relationship that exists between the expansion of the judicial power and the mechanisms of professional accountability to which judicial actors are subjected;
- 2) The frames adopted to refer to the judicial power;
- 3) The impact these frames have on the way the mechanisms of professional accountability work.

We start from the concept of group of reference, or reference group. The reference group is a notion introduced by Robert Merton to refer to the group of people by which an actor longs for been accepted (Merton, 1956). Compliant behaviors and adherence to specific clusters of values promoted by this group represent the clearest indicator of willingness of being accepted by a reference group. The reference group comprises individuals from whom one learns behavioral norms and values. In the judicial field, seniority and prestige determine by and large the type of actors who are entitled to teach and transmit values to incoming judges and prosecutors. In some countries, which adhere more strictly to a *Rechtstaat* model of judicial governance, legal values have been developed by legal scholars, i.e. professors of law (Canehaem, 1991). Patently, in this sector, cultural and institutional traditions exercise a fairly high weight on the type of group of reference (Guarnieri, 2003; Guarnieri e Pederzoli, 2002). The reference group is strictly associated with some sort of professional accountability. *Professional accountability* refers to the control exercised by peers on the base of their knowledge and expertise. Professional accountability is strongly linked with the allocation of moral and cognitive costs. In a way, if a judge wishes to be held in high consideration by her colleagues, she/he will be encouraged to argue and to decide according to the mainstream doctrine. This has also an impact on the career path followed by individual judges. However, even more important than the reference group to which a judicial actor belongs, is the reference group to which a judicial actor aims at speaking to. In this respect, the frame produced by the reference group are constitutive of the self-representation a social actor has of “her/himself into the social world”.

As Pizzorno mentioned in the early '80s by making visible through media judicial a major change takes place also at the level of the reference group of judicial actors. Interferences from politics entered the judicial system and opened up the previously closed doors of the courts. These last interact more and more with external actors, as for instance journalists, representatives of civil society organizations, politicians. The gain received from the increase

of visibility, is then easily transformed in a loss in terms of consistency and cohesiveness of the judicial profession. To whom are junior judges speaking? From whose recognition and awards are they willing to be gratified?

The expansion of the judicial power may take different shapes. One of them is constituted by a distinctive drift of the group of reference to which the judicial actors are held professionally accountable. This happened as long as the judicial actions shifted from being exclusively legally-based to being significantly extra-legally based. The professional standards of a public official which is performing her role on the base of legal values are easily drawn from the tradition and the know-how of the legal experts (and eventually of the senior magistrates), much broader will be the source of professional standards in case the public official starts to perform an extra legal (which does in no means entail an illegal one) role.

This point represents the backbone of the present paper. Being willing of distance ourselves from the current scholarship on judicial activism, we would like to suggest that an innovative and insightful way to address it is by rephrasing the “judicial activism” as a “type of behavior adopted by judges and prosecutors when they justify their choices on the base of extra legal values”. Political positions defended by judicial actions are not in this view but the extreme point reached by a phenomenon that can become manifest in many other milder and more subtle ways, as for instance by speaking out onto the media or by intervening extensively in the intellectual life of a country.

3. The concept of frame as an heuristic tool

A key mechanism by mean of which the group of reference is exercising its influence on a judicial actor is framing. The production, diffusion and enforcement of frames is key to maintain the cohesiveness of an organization – similarly framed actions are required by any organization. The acceptance of this frame as constitutive pillar of the organization is key for the creation of favorable conditions to its maintenance and its legitimacy. This applies also to the judicial organizations. Bureaucratic magistracies share – at least they do it in principle – common frames that describe what the role of the judges and the prosecutors is about, which actions they are allowed to perform, on the base of which values they behave and they recognize themselves as members of the same reference group.

According to the suggestions emerging from other studies in this field (in particular Giglioli et al., 1997) and given the analytical implication of the concept of “frame” (Bateson, 1995; Goffman, 1974) we found this concept really useful to trace and analyze how the society (media, politicians and judicial actors) speaks about “justice”. A frame is not only an analytical tool used in empirical work but also a “collection of ideas” (Douglas Creed, Langstraat, Scully, 2002: 37). A frame defines, creates, explain the public’s beliefs about the causes of social issues and justify the actions of certain actors (Van Gorp, 2005: 488).

Within the literature on the “frame analysis” we found several definitions, but with many elements in common. The majority of these definitions links the framing with the sense-making of events and actions. Among the early definitions of frame, Goffman (1974) specify: “I assume that definitions of a situation are built up in accordance with principals of organization which govern events [...] and our subjective involvement in them; frame is the word I use to refer to such of these basic elements as I am able to identify” (p.10). In other words, frames are basic cognitive structures which guide the perception and representation of reality.

Giglioli et al. (1997) which used the concept of frame in a famous ethnographic research on the Cusani trial (in the context of the Italian Mani Pulite investigation) specify that “ a frame makes-sense by using metaphors, slogans and symbolic images [...] its meaning is build upon the interpretative elements used for framing situations or events”. Then, others scholars have elaborated definitions of frame with particular reference to the media, with a gradual theoretical shift towards a conceptualization of frames as being more actively adopted and manufactured. Particularly in media studies, it has become commonplace to treat the choice of frames as a more or less deliberate process. For example in the Entman's famous definition of frames: “[t]o frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation.” (Entman 1993, p.52 as cited in Barisione, 2008). This definition of frame is particularly useful for our purpose.

From a methodological point of view, a frame could be identified by some *indicators* - metaphors, examples, catchphrases, depictions, visual images, roots, consequences and appeals to principles - and *reasoning devices* that are connected to the four functions of a

frame – *defining a problem, assigning responsibility, passing a moral judgment and reaching possible solutions* (Gamson, Lasch, 1983; Entman, 1993).

Therefore, in line with these researches on the frames of the media (Van Gorp, 2005 as cited in Barisione 2008, p.40), we use a concept of frame composed by four dimensions:

- 1) problem definition (what the action is about);
- 2) causes of the problem (and sometimes responsible of the problem) (the target of the action);
- 3) solutions for the problem (the goal of the action);
- 4) Ethical-normative base (the values on the base of which the action is justified).

We argue in favour of analysing the Italian and Romanian cases of political and economic corruption within a broader context of the judicial, political and social exercise of power. It is difficult “to grasp the frames that result from media practices and the historical, political and social context in which they occur” (Van Grop, 2005: 488).

In the judicial field the differentiation of the frame by mean of which judicial actions have been justified and signified so far has been very instrumental to the construction of a legitimate, separate, and autonomous judicial branch. This frame was mainly based on legal values and was enforced by legal experts.

The point we want to make here is that better than to speak of judicial activism is to speak of an expansion – undue and improper, one may say – of the types of frames used to make sense of the role judicial actors play into a democratic society. This has drifted – or is going to drift – the mechanisms of professional accountability and to outsource such mechanisms to non legal experts, mostly social actors and above all politicians. The search of the recognition of the politicians is a clear indicator of such a change.

To highlight such a critical change we could not avoid mentioning the role the media play in the public discourse of contemporary democracies.

During the 90s, in the majority of the Western democracies, the media became more and more a key actor in building the public opinion in the field of justice and in shaping the relations between judicial actors and political actors. Judicial actors used the media as an arena for several reasons. They saw in the media a new channel to gain legitimacy and visibility during a phase (the 90s) in which the power of judicial hierarchy decreased rapidly.

They saw in the media also an arena that could contribute to support and to reinforce their role in the society.

Since then, the group of reference was no more in the magistracy as professional group, but became embedded in the preferences and in the expectations of the public opinion (Catino 2001; Guarnieri and Pederzoli 1997; Pizzorno 1998). In Italy, the crisis of the political system with the Tangentopoli investigations signed the critical juncture breaking with the past and starting with a massive mediatisation of justice. Already with the big Mafia trials, courts and judges (mainly public prosecutors) gained visibility in the media, especially television. But it is in the 90s that the magistracy started intentionally to look for the media attention. The result was the creation of a *media-judiciary circle* contributing to increase the power of judges in building public opinion in the field of justice (Mazzoleni 2004; Giglioli 1997; Amoretti 2000; Catino 2001). In France and in Belgium, it is more the struggle against violence that was mediatised. In Spain, during the past years, the attention of the media was indeed focused on the trials concerning separatist terrorism and crimes occurred during the Franco authoritarian regime. The media convey the image of justice which is interiorized by the society (Commaile 1994; Garapon 1996; Hannin 1994). Cases of mediatised justice are today very frequent in Italy, France and other European countries. The focus is principally on criminal cases in France, while in Italy it is the political corruption the main issue of the media agenda.

Media could be conceived both as “frame producer” and “frame diffuser” (Gamson and Modigliani 1989). As frame diffuser the media spread frames produced by other actors, mainly judicial actors and political elites. This distinction, media as frame producers versus media as frame diffusers will turn out very insightful in the analysis we are going to develop of the two judicial cases handled by the Italian and the Romanian prosecutorial offices.

The following part of the paper will be focused on the two cases of corruption (in Italy and in Romania) on which this preliminary research is based.

Framing an Italian case of corruption: The enquiry on “appalti a Napoli”

On December 17th, 2008 the Italian newspaper “La Repubblica” published an article speaking about an enquiry that was open in Santa Maria Capua Vetere (a small city in the Naples district) concerning an enterprise named Global Service that was in charge of many public procurements in the Naples district. During 2008, in fact, the prosecutors of Santa

Maria Capua Vetere have conducted an investigation on local politicians alleged of illicit links with entrepreneurs and industrialists.

Through the telephone tapping the prosecutors discovered that one of the entrepreneurs implied in this investigation was Alfredo Romeo, the holder of Global Service, a society managing the bigger part of public procurements in Naples for streets cleaning, schools cleaning, rental of public buildings and many other public service contracts. For this reason, the prosecutors of Santa Maria Capua Vetere passed all the information concerning Romeo to the Naples prosecutors⁴. This is because the Italian legal system foreseen that the cases have to be investigated by the prosecutors of the city in which the facts have occurred. In this way the inquiry are split in different “filoni di indagine”. In this case, the investigation started in Santa Maria Capua Vetere and then a specific part (the one concerning Romeo in Naples) was passed to the Naples prosecutors.

Which facts were discovered by the Naples prosecutors? They discovered that Romeo has built a strong network composed by experts, civil servants and local politicians. These “friends of Romeo”, throughout their different positions within the local institutions, provided him absolute guarantees to gain all the public procurements in Naples in exchange of money, jobs and personal gifts. The calls for tenders were organized in order to be perfectly matching with the Romeo proposals. In this way, he has obtained public procurements for 400 million of Euros⁵. It has to be mentioned that Romeo was already investigated for corruption at the beginning of the 90s, notwithstanding it was able to build a sort of empire of the public procurements in Naples.

The telephone tapping evidenced that Romeo had established strong contacts with politicians both from the left and right political coalitions. In particular, according to the prosecutors, the members of the Romeo organization were: 12 local councillors (assessori), one colonel of the Guardia di Finanza⁶ (that informed Romeo about the investigation before it was publicly announced on the newspapers), one chief-officer of the public work department of the Campania region and two national politicians - one from Partito Democratico (left) and one from Alleanza Nazionale (right). Concerning the two national politicians it was specified

⁴ La Repubblica, « L'inchiesta sul Global Service da Santa Maria Capua a Napoli », 17 dicembre 2008.

⁵ Corriere della Sera, « Napoli, 13 arresti : bufera sulla giunta. Coinvolti anche Lusetti e Bocchino », 18 dicembre 2008.

⁶ Guardia di Finanza is the National guard for the investigation of financial crime.

that, although they had contacts with Romeo, they were not directly implied in the corruption facts.

The names of other persons were given forth, in particular local and national politicians from the left coalition. For this reason, after some days from the announcement of the enquiry, the media started to title the investigation “La tangentopoli rossa” (the tangentopoli of the left parties). In fact, this investigation had a strong impact on the Partito Democratico at the national level and all the public debate was focused on the consequence of this scandal for the Italian left.

Silvio Berlusconi openly criticized this situation, asking for the resignation of the Naples mayor (Rosa Russo Iervolino from Partito Democratico) and underling as also the Italian left was finally implied in corruption cases. The mayor tried to change a little bit her district council ordering the resignation of the councillors implied in the investigation. Anyway, she was strongly criticized for the weak signal of change.

Others “filone di indagine” were open by the Naples prosecutors and others names of persons involved in the enquiry were revealed by the newspapers. In particular, the prosecutors underlined as one of the Romeo clan members, the chief-officer of the public work department of the Campania region, had a key role in organizing the call for tenders matching with Romeo offers. Among the telephone tapping of this chief-officer, the prosecutors discovered some talks with Cristiano Di Pietro, the son of the judge Antonio, the hero of Tangentopoli and today the leader of the centre-left party Italia dei Valori. Also the son of Di Pietro had a political role as local councillor in the Campo Basso district. These talks between the chief-officer and Di Pietro junior were dated in 2007 when Di Pietro senior was Minister of Public Works in the Prodi government. In these talks, Di Pietro junior asked to the chief-officer some confidential information about calls for tenders and for this reason he was officially investigated. Soon after, he left his party and his political charge.

The involvement of Di Pietro and his party, Italia dei Valori, fuelled the public debate because this party was never involved in this type of scandals and rumours before this investigation. The party, founded by the judges Di Pietro at the beginning of the 2000, progressively became one of the major centre-left parties, focusing all its political activity on the respect of legality and morality.

Media as frame producer

The newspapers articles analysed are characterized by the following elements:

First, the content of the articles describes in details how the corruption facts were produced with dates, names, places and so on. There are very technical descriptions without any comments or personal insights, nor observations on the political or social consequences of the facts.

Secondly, in the titles, journalists massively used metaphors and images mainly linked to Tangentopoli and Mani Pulite. “Tangentopoli rossa” (the red Tangentopoli); “La nuova Tangentopoli” (the new Tangentopoli); “Mani pulite al contrario” (the opposite of Mani pulite, meaning that here are the entrepreneurs that control the politicians). Many articles evidence how, contrarily to the 90s Mani Pulite, in this case was an entrepreneur that were able to control the politicians obtaining favours and contracts. It was an entrepreneur that created a strong system to manage the local political power.

And last but not least, the enquiry was presented, although not in a very explicit way, as a positive event for Berlusconi and his power because it shows how also the leftist parties could be involved in corruption allegations.

Political actors as frame producer

Political actors used and commented this investigation in different ways. Berlusconi immediately linked this fact with the need for a reform of the criminal justice explaining how the enquiry revealed two important aspects:

1. The judges are too powerful in conducting investigation on political cases; thus, a reform of the judicial system is needed diminishing the judges powers, in particular concerning the telephone tapping;
2. This enquiry revealed also that there is not a sort of “moral superiority” of the leftist parties. Corruption allegations could involve all parties and judges could investigate all parties’ leaders, thus a reform could be useful for the entire political spectrum.

Some members of the leftist parties explicitly criticized the mayor of Naples for her weak control on the public procurements of the city.

Judicial actors as frame producer

Judicial actors, mainly the prosecutors heading the enquiry, were frequently interviewed in the newspapers, giving much information on the facts, names and technical aspects of the enquiry. In the span of time analysed, approximately each day we can find an interview of the Naples prosecutors.

The main issues they underlined were related to the fear that the enquiry was transferred to other prosecutors' offices and the importance of the telephone tapping for the criminal investigations.

In each of the prosecutors' declarations we found reference to the need and the importance of the telephone tapping. It is very important to underline that during the month of December 2008, when the enquiry was made public, Berlusconi government was discussing a law limiting drastically the use of the telephone tapping in criminal investigation.

Other judicial actors, such as the Superior Council of the Magistracy, the high courts or the judges associations did not intervene in the debate at all. We did not find any declarations or interviews from other judicial actors with the exception of the prosecutors of Naples.

Table 1: Frames' reasoning devices in the Italian case

Reasoning devices of a frame	Italian Newspapers	Italian political actors	Italian judicial actors
What is the problem?	<p>“Mani pulite of the left parties”</p> <p>“Red (leftist) Tangentopoli”</p> <p>“The opposite of Mani Pulite: now the entrepreneurs control the politicians”</p>	<p>President of the Republic: “this event shows how ethic and moralization are needed...”</p> <p>Berlusconi: “even the left parties are involved in corruption cases”</p> <p>Berlusconi. “this case evidence again how judges have too much power in tapping the telephones..”</p>	<p>Naples prosecutors: “this case evidences the need for moralization..”</p> <p>“it is a sad day for Naples”</p> <p>“this case shows how the telephone tapping are the only mean to combat corruption in the public services”</p> <p>“the telephone tapping were fundamental for the enquiry”</p>
Who is responsible?	<p>The corrupt entrepreneur Romeo.</p> <p>The “powerful</p>	<p>President of the Republic: politicians and civil servants are completely lacking of</p>	<p>Naples prosecutors: “the Romeo system”; “the Romeo network”.</p>

	<p>network” of politicians, experts and friends that Romeo built.</p>	<p>ethic and morality.</p>	
<p>What action should be taken? (which measures should be taken?)</p>	<p>-</p>	<p>President of the Republic: moralization of the public institutions.</p> <p>Berlusconi: it is important to reduce the power of judges in investigating corruption cases in public institutions.</p> <p>Di Pietro senior: judges must investigate and find out the names of all the persons involved.</p>	<p>Naples prosecutors: allow the telephone tapping every times the judges think they are needed</p>
<p>Values on the base of which the problem is assessed</p>	<p>No direct moral judgments. They use the metaphors “Manipulite of the left” or “the red Tangetopoli” to express their judgments.</p>	<p>Berlusconi: the left is not away of corruption scandals.</p> <p>There is no more a primacy of the morality,</p>	<p>Judges can exercise a moralization role in the society. They have to be free in investigating all the cases that are considered relevant.</p>

Framing a Romanian case of corruption

In 2008 the Romanian daily newspaper Adevărul published a series of articles revealing that “a small number of businessmen lay down the law in Bucharest”. Compared to the “sharks”, these businessmen seem to take control of the major part of the real and land estate in and around the city. They “have the power over the city” because they obtained from politicians and mayors precious and confidential information about the development plans and sections in Bucharest. In this way, the businessman knew where to invest in real and landed estate. On the improved land, they have built airports, modern headquarters, and private villa benefiting from international and European financial support. “Luxury real-estate projects built for important businessmen or politicians have gradually replaced the green belt around Bucharest (Nine O’Clock, 20 October 2008). According to the journalists, each “shark” has its influence and power in a specific area of the city, Bucharest being divided between them and according to their interests.

One of them, the most discreet, has been investigated by the National Anti Corruption Department (DNA). In 2009, all the Romanian newspapers reported on this case, the articles including information about the investigation and about the past of the person involved. Starting with the background, the Romanian reader learned that this businessman married at the beginning of the 1990s the daughter of the Vice President of the Socialist Republic of Romania. He was “the chief of the Military Section of the Romanian Communist Party’s central Committee (...). He coordinated and controlled the ministries of the Interior, the Securitate, Justice and Prosecutor’s Office” (Nine O’Clock, 1 June 2009). Before 1989, the businessman’s wife was working for the service of counter espionage. After the collapse of the communism, the businessman and his wife left the country for the United States. Soon after, he started to make affairs with and in Romania. Some journalists mentioned his name in 2003 in relation with the former Romanian President, Ion Iliescu. The businessman had accompanied the President abroad in various delegations aiming at improving investments in the country. In 2003, he was introduced in the Capital Top 300 of richest Romanians, with an estimated wealth of over USD 100M (Nine O’Clock, 26 March 2009).

In March 2009 this businessman becomes a topical issue. The DNA starts to carry out an investigation concerning the sale of an under evaluated plot of land (224 ha) in Baneasa (near to Bucharest). The businessman purchased the plot of land for significantly less money than its actual worth. A criminal investigation had been started in 2000 when another businessman interested in purchasing the same plot of land complained about the way the transaction had been done. But in 2000, the General prosecutor’s office closed the case for lack of evidence (Nine O’Clock, 1 June 2009). The terrain had been sold to this businessman by the University of Agronomy, the Rector of the University being an old friend and colleague of the businessman’s father. After receiving a new complains, in 2008 the DNA reopens the file. The investigation was about the purchase price of the land (1 €/m² in spite of 150€/m²). It was revealed that the terrain was not in the property of the University but of the Romanian State. According to judicial sources, journalists reported that the damage was estimated at 336 millions Euros.

The case is mediatised in March 2009 when the DNA’s employee who held the inquiry denounced that he was subjected to pressures in order to stop this investigation. According to his declarations, two chief directors from the Ministry of Interior - the head of the Ministry’s Internal Protection and Intelligence Department (DGIPI) and the head of the Anticorruption

Department's Operation Division within the same Ministry (DGA) - asked him "to solve the file sooner" and "to give a favorable solution". The DNA's employee was told by the heads of the DGIPI and the DGA that the businessman under investigation benefited from the support of important Romanian political personalities. The implication of some of them was the reason for which they asked the prosecutor to stop the investigation. They informed him that the businessman probed is "so important, that even the President of Romania and the Prime Minister are queuing at his door" (Revista 22, 27 March 2009). It was suggested in the media that the former general mayor of Bucharest, the current President of Romania, had granted a number of controversial permits to this businessman. Calin Popescu Tariceanu, former Romanian Prime Minister, was also mentioned. Another story published by journalists was focused on the affairs of this businessman with the brother of the Romanian President.

The DNA's employee was both investigator and whistleblower (Jurnalul National, 18 June 2009). On the basis of his testimony, not only the businessman and the Rector of the University of Agronomy were under investigation, but also the two chief directors from the Ministry of Interior. The Rector of the University was "investigated for abuse of position against public interest with aggravated consequences". The businessman was probed for "complicity to abuse of position". The head of the Ministry's Internal Protection and Intelligence Department (DGIPI) was accused of "favoring the offender and of using information that was not destined to be made public and allowing unauthorized people to have access to this information in exchange of material benefits" (Nine O'Clocke, 26 March 2009). The head of the Anticorruption Department's Operation Division within the same Ministry (DGA) was probed for favouring the offender.

These declarations of the DNA's employee provoked many others. The businessman under investigation declared that the land purchased was not the property of the State. He denied the business relations with the Romanian President's brother, saying that this is "only a speculation of the media". The President of Romania upheld that the "affair under investigation is not at all illegal" (Revista 22, 29 March 2009). From his point of view, "it is an error to blame an investment of such a scale".

The case opened a widespread debate between politicians, judicial actors and journalists.

Initially, the case was about corruption, the way of doing business in Romania and about the relationship between businessmen and politicians. Journalists talked about a "real estate

empire” controlled by the probed businessman (Revista 22, 31 March 2009) who holds a “small city” in the northern part of Bucharest. On the basis of the information provided by the head of the DGIPI and DGA to the DNA’s employee, journalists reported that the businessman seems to be related or to be very close with various politicians. Journalists commented on how all this people break the law. But the main focus was on the role of the DGIPI.

Going back to our analytical framework let us to consider now how Romanian actors (media, political and judicial actors) engage in framing “to forward a particular interpretation of an event” (Essary, 2007: 512). By frame we understand “a particular logic or organizing principle with which a given policy conflict is described in media reports, suggesting particular themes, interpretations, and terms by which such conflict should be understood” (Lee, McLeod, Shah, 2008: 595). As it will be observed, both in the Romanian and in the Italian case, “the cultural cues used to discuss a topic, including the selection of words, symbols, illustrations, or rationales, convey a globally relevant interpretation” (Essary, 2007: 512). Using the concept of frame is one analytical way “for sorting out many viewpoints and stances as the objects of inquiry” (Douglas Creed, Langstraat, Scully, 2002: 38). In what follows we will focus on the issues of inquiry pointed through media not only by journalists but also by the political and the judicial actors.

Media as producers of frames

Referring to this case, journalists talked about “an explosive ratatouille” in which are involved “the secrete service, businessmen and politicians”. They presented it as “a fist performance in the history of the Romanian judiciary” (Adevarul, 26 March 2009; Jurnalul National, 26 March 2009) for at least two reasons. It was for the first time when a public prosecutor set up an investigation on a chief of a secrete service. It was a performance also because “this business man was the second Romanian multimillionaire detained for 24 hours by the DNA” (Revista 22, 25 March 2009).

Stories and characters were on the front page...but also some ideas and principles in relation with the functioning of institutions and the quality of the Romanian democracy. Theses stories were about the attitude of businessmen toward legal order, about the work of the public prosecutors in corruption cases, about the use of interceptions in the fight against

corruption, about the mediatisation of corruption cases and the way of dispensing justice on TV.

But one of the aspects to which journalists paid attention was the nature and function of an institution created at the beginning of the 1990s: the Ministry's Internal Protection and Intelligence Department (DGIPI). The DGIPI becomes the "main issue" in this case (Revista 22, 25 March 2009). This direction is "one of the most controversial intelligence services currently operating in Romania and which is known by the code name UM 0215"⁷. This service was created after the collapse of the communism in the context of the reorganisation of the former Securitate. In 1998, the Minister of Interior, Gavril Dejeu, declared that 22% of the UM 0215 were officers of the former Securitate⁸. The main mission of the institution is to "collect information in order to fight against criminality" (Revista 22, 31 March 2009). But, during the 1990s, the institution has been involved in various scandals. In 1998, the Interior Minister, Gavril Dejeu, informed that "the decision to close down the 0215 Military Unit (UM 0215) is not necessarily connected to its alleged members of the former Securitate; actually, it was the image of the unit in the public opinion and its activity that were taken into account" (Rador, 1998). The structure was never closed down. In 2009 journalists still complained about the same thing: the DGIPI, the former UM 0215, "applies the same methods as the political police under the communist regime" (Revista 22, 31 of March 2009). The journalists pointed out the "illegal activities" of this service and the fact that its mission is to "elaborate personal files, to peddle influence, to tap people's phone at the request of politicians". For this reason, "the person who command it has an excellent instrument for blackmail and political control" (Revista 22, 31 March 2009). This is why the appointment of its director is always much disputed and the result of a "political struggle".

Journalists tried to go further on in understanding the case. They were involved in a deeper debate over whether this is a "case" or this is a "show". They were interested why the scandals brake in March if the DNA's employee denounced the pressures in December 2008 (Revista 22, 25 March 2009; Adevarul, 27 March 2009). They formulated two hypotheses: (1) this case speaks about "the dissolution of the state power" and the "recrudescence of the criminality" and (2) this case is "to show us the great job of the DNA". But "we don't know", concluded the journalists (Revista 22, 25 March 2009). In any case, the DGIPI is "drifting" (Adevarul, 29 March 2009) and, at the end, this case is about anything but corruption

⁷ http://www.ceausescu.org/ceausescu_texts/revolution/the_enemy_within_um0215.htm

⁸ RADOR, « UM 0215 still operational », 27 May 1998.

(Jurnalul National, 18 June 2009). According to Romania Libera, “this case “is still far from having cleared all the high level implications of the controversial affair” (Romania Libera, 30 May 2009). “This show” (not this case) is “directed by zealous civil servants to prove the public how well defended is the rule of law” in Romania, but “*they don’t realize that actually they proved their incompetence and helplessness. The DNA is one of the most inefficient institutions of the domestic democracy* (Nine O’Clock, 30 March 2009).

Some journalists reminded that “the involvement of politicians in corruption cases is always a matter of concern before elections” (Adevarul). It was also suggested that this businessman was only the “victim” of a “war” between influent politicians (Adevarul, 26 March 2009). The former head of the Romanian Intelligence Service confirmed in an interview the hypothesis that this case of corruption is just a political war. He said that the arrest of the head of the Internal Protection and Intelligence department of the Ministry of Interior is “just the tip of the iceberg” (Nine O’Clock, 26 March 2009; Jurnalul National, 3 April 2004) because “*events that are hard to imagine will follow and that several people, including many politicians and important figures in several fields of activity will be arrested*”. There is an “electoral background to these actions”. Very mysterious, the former head of the Romanian Intelligence Service drew the attention to the fact that “there will be things that only some people will be able to understand”. But what should to be understood is still a mystery. The journalists tried to get the idea.

What’s the moral of the story? This case shows us once again that politicians and normal people have different perceptions on what is “legal” and “illegal” (Jurnalul National, 21 May 2009). This reflection was based on the declaration made by the President of Romania who said that “it is an error to blame an investment of such a scale”. He was speaking about the development plan of the businessman in the Baneasa area. Therefore, journalists concluded that it is “normal” to buy a terrain at a so “special price” if you have this “opportunity” (Jurnalul National, 21 May 2009). It is also “normal” to break the law if you do not trust the State’s institutions (Cotidianul, 3 April 2009). It is also “normal” to use the social and economic cohesion programmes of the EU for “a private investment about which the owners say that it is the biggest urban development programme in Europe” (Nine O’Clock, 10 July 2009), doesn’t matter if “the agglomerated areas in Bucharest should have priority”.

The moral of the story is that in this “show” (not in this case) “*nothing may be criminal, but only a series of contracts, arrangements, deals, assistance, approvals, all of them made in*

the absence of a coherent, complete, functional legal framework. This is why the DNA cannot finalize the files opened with such enthusiasm. The purgatory of the transition to the rule of law is also the paradise of the lawyers. When the laws are ambiguous (...) the lawyers can obtain a minimal punishment with suspension or even to declare you innocent. And the people believe that they are brilliant lawyers. But, have you asked why the prosecutors and the judges fail professionally...? (Nine O'Clock, 30 March 2009). This quote from Dan Pavel, political scientist who worked as counsellor for various politicians, is an illustration about how a corruption case is framed through opinionated media.

In the process of covering policy disputes, Romanian journalists practice the “issue dualism” in that sense that they seek a balance between competing positions (Lee, McLeod, Shah, 2008: 595). They reported on the case but they also asked politicians and judicial actors to comment on the issue.

Political actors as producers of frames

Frame analysis allows us to expand the voices considered but also to consider the silences (Douglas Creed, Langstraat, Scully, 2002: 45). The reactions of the political representatives on this matter were rather scarce. They evoked summarily some points: the relationship between politicians and businessman, the “overzealous” activity of the DNA’s employee, the economic implications of the way in which European and international funds are used and the need to carry out an investigation on the affairs of the Romanian President’s brother (declaration of the President of the Social Democratic Party). But the main focus was again on the DGIPI.

Compared to the other politicians, the declarations of the Romanian President were plentiful. He explained that he met the businessman under investigation when he was the mayor of Bucharest. He took this opportunity to highlight the importance of his investments. He expressed his dissatisfaction about the fact that the head of the Ministry’s Internal Protection and Intelligence Department (DGIPI) used his name in order to dissuade the prosecutor to hold the inquiry (Revista 22, 27 March 2009). From his point of view, this institution is completely “unreformed and crammed that needs cleansing, but it should not be shut down because the Ministry personnel needs to be supervised to make sure they do their job and not play political games or peddle influence” (Adevarul, 29 March 2009).

The current Romanian Prime Minister stressed two points: the first one was in relation with the fact that the DNA is not allowed to disclose information about a person under preliminary judicial investigation. The second point was about the DGIPI. The Prime Minister said that “if there is a fault, that belongs to the internal protection service from the DGIPI” (Nine O’Clock, 30 March 2009). The Minister of Interior emphasised that the “problem is serious” and he made know his intention to dissolve the DGIPI (Revista 22, 25 March 2009).

Judicial actors as producers of frames

The case has been brought before the court. The DNA’s employee denounced the fact that the head of the Ministry’s Internal Protection and Intelligence Department (DGIPI) was “obtaining confidential information and allowing other people to have access to this information in exchange for material benefits” (Revista 22, 25 March 2009; Adevarul, 28 March 2009). He presented a report with the details of his contacts with the two chief directors from the Ministry of Interior. According to the information provided by the DNA and included in the Court’s motivation, the prosecutor has been approached by these people by mid December 2008. They did not know the DNA’s employee was delegated to work on this case. “As they have been colleagues and friends”, they asked information about the case and the name of the prosecutor who holds the investigation. The DNA’s employee gave a wrong name. The 17th of December, the head of the Ministry’s Internal Protection and Intelligence Department (DGIPI) contacted the prosecutor to ask if he could help the businessman. The 18th of December they have lunch together. The prosecutor was told that the businessman has connections with the President of Romania and the Prime Minister. The heads of the DGIPI and DGA suggested to the prosecutor that, if he will hold the inquiry, he will be “rewarded”. Before Christmas, the prosecutor received some gifts from the chiefs of the DGIPI: one bottle of Romanian brandy (palinka), one of whisky (Revista 22, 25 March 2009), a ball point pen, a lighter and a wall calendar (Nine O’Clock). They saw each other the 21st of January 2009 to discuss about the investigation. They met again the 27th of January but this time with the businessman who promised to the prosecutor “his help in a crucial moment” (Adevarul published integrally the Court’s decision, 25 March 2009).

The defense lawyers declared that “*there were interventions, we cannot deny this, but the interventions were meant to solve the file sooner as the people involved were under a lot of pressure*” (Nine O Clock, 26 March 2009). According to the head of DGA, “*everything*

started from a reproach from the former DGIPI chief, who, some time before, had complained about many stalling judicial cases” (Nine O Clock, 1 April 2009). Before the court, the former head of the DGIPI assumed the responsibility for the fact that in the discussion with the DNA’s employee he invoked names of persons with important positions in the state (Nine O Clock, 1 April 2009).

The Court of Appeal of Bucharest turned down DNA’s proposal of preventive arrest of the four people probed. The President of the Court, judge Viorica Costiniu, declared, in the motivation of the decision, that the prosecutors did not bring concluding evidence in the case, and the remanding would be an excessive measure” (Adevarul, 28 March 2009; Nine O’Clock, 30 March 2009). The Court concluded that the DNA’s employee “provoked” the chief director of the DGIP. Their meetings were recorded. The prosecutor promised to the heads of the DGIPI and DGA to complete the case and give a favourable solution in three weeks. According to the Court’s decision, he was “very insistent” in his relations with these people.

For the Court the arrest of these people “would be an excessive measure” because the defendants do not have a criminal record, “have a good behaviour” in the past and “there are not proofs that they want to bypass the judicial procedures in progress”. Last but not least, the Court stated that “it is difficult to verify the information concerning the relationship between the businessman and the politicians mentioned in the case”. They were leave custody but were banned from leaving the country. The decision of the court has been appealed by the prosecutors (Nine O’Clock, 26 March 2009) to the High Court. The journalists reminded the personal conflict between the chief of the DNA and the President of the Court of Appeal of Bucharest (Cotidianul, 26 March 2009). The DNA has complained against this judge with the SCM, accusing her of negligence on duty (Nine O’Clock, 26 March 2009).

Before comparing the two cases, let us summarize the frames shaped by the newspapers and through the newspapers by the Italian and Romanian political and judicial actors by looking at how they “select some aspects of a perceived reality and make them more salient” (Entman, 1993: 52) than others. The following table contains the main framing and reasoning devices identified in relation with the Romanian case of corruption.

Table 2: Frames' reasoning devices in the Romanian case

Reasoning devices of a frame	Romanian Newspapers	Romanian actors	political	Romanian actors	judicial
What is the problem?	<p>A first performance in the history of the Romanian judiciary</p> <p>An explosive ratatouille</p> <p>A political war</p> <p>A "show"</p> <p>Legality vs illegality</p> <p>"we don't know"</p>	<p>The overzealous activity of the DNA's employee</p> <p>THERE IS NO PROBLEM ("it is an error to blame an investment of such a scale")</p>		<p>Pressures (DNA's employee)</p> <p>"an excessive measure" (Court)</p> <p>Lack of evidence (Court)</p>	
Who is responsible?	<p>The secrete service DGIPI</p> <p>The DNA, one of the most inefficient institutions of the domestic democracy</p>	<p>The "unreformed and crammed that needs cleansing" (President of Romania, Traian Basescu)</p> <p>"if there is a fault, that belongs to the internal protection service from the DGIPI" (Prime Minister, Emil Boc)</p>	DGIPI	<p>The DNA's employee was "very insistent" and "he provoked" (Court)</p> <p>(general comment) The DNA because of its "originality" in carrying investigations (CSM)</p>	
What action should be taken? (which measures should be taken?)	-	<p>Reform the DGIPI (President of Romania)</p> <p>Dissolve the DGIPI (Minister of Interior)</p>		<p>Apply the criminal code to the letter</p>	
Values on the base of which the problem is assessed	<p>"We don't know"</p> <p>Explain and understand</p> <p>Media acts as the "moral conscience of the society"</p>			<p>Legality of the procedures</p>	

Comparing the two cases: what holds these elements together?

As Thomas Koenig puts it, "most empirical research on frames and framing" is "national in scope". According to this author, this "case study bias is surprising because a major factor

that influences framings is the *discursive opportunity structures*, which vary systematically by country” (Koenig, 2006: 62). The analysis of the data proves the “cultural repertoires” and the “discursive styles” of the two cases different. In the table 3 we try to summarize and classify on the base of the analytical grid used to disentangle the several components that are assembled into the frames.

Tab. 3. A Synoptic view of the two frames

	What is the problem?	Who’s responsible for the problem ?	Which measures should be taken?	Values on the base of which the problem is assessed
It	In Naples the social and the political systems are entirely corrupted	Romeo; the local public administration; « system», « criminal association», « comitato di affari »,	Politics and economics should be moralized and cleaned up from corrupted people. Wiretapping should be used extensively A point of discontinuity with the past (break) should be opened.	Public Ethics Judicial Ethics
Ro	The excess of zeal of the prosecutor (Costiniu) The excess of the use of wiretapping. The role of the DNA (CSM)	The discretionary power of the public prosecutor; the originality and the creativity of the decisions taken by the public prosecutor; an unlawful use of the wire tapping.	The judges are in a good position to create a barrier and resist the activism of the prosecutors	The legality principle; the value of the legal code and the judicial procedures.

The Italian case

A first general appraisal of the way the Italian newspaper treated this case may sound as the following: Italians journalists play the role of the amplifier, rather than playing the role of the speakers, the speakers being located in the political and in the judicial institutions.

A common point raised by all newspapers, independently from their political orientations, regards the diffusion and the extension of the corruption into the public sector. Giving voice to the concerns expressed by prosecutors and politicians, the media reflect an image of a country whose legality principle is dissolved in the myriad of actions in which the partisan

and the office-seeking logic melt together and create the perfect humus for the diffusion of the corruption. The lack of a public ethic, shared by left and right politicians, is denounced.

However, it would be difficult to say that the newspaper play the role of external counterbalancing social power, as they are supposed to do according to the liberal theory of democracy. The only aspect that reveals some degree of pro-activism is the creation of the titles, which sound provocative, evocative and reminders of the much more disruptive experience of MANIPULITE. The fact that the corruption touched now the previously untouched left has been also made into a subject of scandalistic and provocative statements by the journalists.

This nonetheless, the bulk of the framing process takes place outside the mediatic arena, which receives mostly the frames produced by judicial actors and politicians.

Little surprise that the politicians make a scandal out of the affair of Romeo. As the government is led by a right-oriented coalition and the local administration of Naples is led by the left party, the members of the government and in particular the Prime minister have easy game in delegitimizing the left and denouncing the fall down of the angels into the obscure realm of the corruption. Of course, more interesting for our analysis is the fact that the newspapers amplify the statements and the appraisals of the government.

However, it is interesting to see how the lack of public ethic is denounced by political and judicial actors.

The most interesting side of the whole story is the position taken by the judicial actors. The enact framing processes in a very fragmented and individualized way. Within the prosecutorial office of Naples the chief prosecutors and his colleagues (sostituti procuratori) take different positions as to the need of making public the information they have and as the very same role the judicial actors should perform in such a situation. The chief prosecutor seems to defend a moderately activist behavioral pattern, whereas the sostituto procuratore seems keen to follow a more activist behavioral pattern. Judicial actors also present mostly themselves as the source of a process of renewal of the public ethics. They should fight this harsh battle to save the country from the malaise of the corruption.

It is interesting to notice that the debate is deeply influenced – as in Romania – by the political debate developed about the use of the phone and wire tapping. To what extent judges

should be left free of violating the privacy of the citizens? Only in the name of high values and non negotiable collective goods? In Italy this issue is dealt through the lenses provided by the frame that presents the judicial role as a role constituted by extra legal values (Crusaders of the public morality and the public ethics). As we will see, in Romania, the values on the base of which is developed the debate on the judicial activism are still the legal ones (legality principle, value of the respect of the judicial procedures).

The Romanian case

Unlike the Italian newspapers, the Romanians newspapers publish more opinionated articles. More in general, they participate more actively to the process of framing the case.

As Douglas Creed, Langstraat, Scully pointed out, “frame analysis is enhanced by an in-depth knowledge of actors and social arena involved” (2002: 49). Therefore, in order to better understand the Romanian sample case, it is important to consider the general context of its mediatisation. Romania has witnessed since the collapse of the communism an explosion of corruption scandals that have implicated representatives from the major political parties, businessman, judges, prosecutors, police man.... The fight against corruption has been presented many times as one of the main political priorities. In 2004 it was the main electoral theme campaign of the current President of Romania and of the political alliance between the Democratic Party and the National Liberal Party, “Justice and Truth”. However, high and constant levels of corruption are still a matter of concern. In Romania, the democratic governance seems to “decay into the ability to come to power on the basis of *illusory expectations*” (Habermas, 1992). In spite of a new legal framework, the under-enforcement of the corruption laws is still a feature of the post communist Romania. The political elites are “willing” to solve this problem, the judicial institutions “able” to do it...but nothing happens. “In Romania there is corruption, but no corrupt people” (Popescu-Barlan, 1994: 375). Elected officials, businessman and magistrates have been placed under investigation for corruption but never convicted. The effect of the past and ongoing judicial inquiries is null and the scandal remains the “disruptive publicity of transgression” (Abut, 2004: 532). Political representatives invite magistrates to do their job and to show their “patriotism” in the fight against corruption and “for the European destiny of Romania” (Evenimentul Zilei, 16 February 2009).

In Romania there is a “culture of the talk show” and of the information as a spectacle (infotainment). Everything is “life” from the place where things happen. Journalists and political scientists contentedly comment on actuality with the aim to explain issues, but also to identify the causes of the problems. Political controversies and corruption cases are presented as a clash of moral principles and basic values. Romanian journalists try to act as the moral conscience of the society. The talk show is an arena.

What is at stake in this case?

This case is a matter of “infotainment” at a time when the Superior Council of Magistracy criticizes the activity of the National Anti Corruption Department. The last 20 years, journalists and civil society representatives never tired of wondering to what extent Romania is an *Etat de droit*, to what extent interceptions are used in legal purposes and to what extent Romania is able to put an end to a past when prosecutors were powerful and judges just puppets (Radio Romania Actualitati, October 2007). Every case of corruption becomes a topical issue debated by a plurality of actors arguing about which version of reality (of many) is correct.

For the Romanian politicians the issue in this case was not the exchange of favours between politicians and businessman, but the need to reform or to dissolve the Direction of the Ministry of Interior (DGIPI). The number of politicians arguing about the sale of the plot of land was rather small. Some of them evoked the “overzealous” investigation carried by the DNA’s employee. But there is not a real political debate about the direction Romanian society should take. This case surprises by the normative poverty of the political discourse, by the lack of symbolic and substantive statements on the problem and on how to solve the issue.

As a matter of fact, this case of corruption aroused debates about the confusing mandates of the secrete services in Romania and the use of confidential information to stop or “to solve a file sooner”. After the collapse of the communism, various intelligence services were operating in Romania, but “the exact number and functions of these units, about which the authorities have made contradictory statements, have become the object of widespread speculations in the media” (Baleanu, 1995). The National Security Law passed in Romania in July 1991 stipulated that the “SRI, the SIE (the foreign Intelligence Service), the SPP (the special protection group for the President, ministers and foreign dignitaries), the Ministry of

National Defence, the Ministry of the Interior (UM 0215), the Ministry of Justice (with its own intelligence service) were empowered to carry out activity related to the defence of national security (Deletant, 1995). Journalists constantly blamed them for abusing their positions. The GDIPI, the former UM 0215 created in the 1990s, “had resumed the practices of the former Securitate (Deletant, 2004: 510). It was gathering information about Romanian living, studying and working abroad, about employees of foreign firms in Romania ... (Deletant, 2004: 510). This service was monitoring “the movement of political personalities, journalists and trade unionists”. Even if it has no constitutional mandate to gather intelligence (Deletant, 2004: 510), this structure duplicates the work of the Romanian Service of Information (SRI).

From a judicial point of view, this case is about a prosecutor who denounces pressures and interventions to stop an investigation. Only this aspect makes this case rather singular. Romanian judges and prosecutors complained about political pressures many times but it is for the first time when a prosecutor denounces it during an investigation. But the Court considered that the prosecutor “provoked” the people under investigation and that the pieces of evidence in the case were not sufficient. This case was also about the National Anti Corruption Department, the institution which holds inquiries into big cases of corruption. The work of the DNA is evaluated not only by the European Commission and International Organisations but also by the Superior Council of Magistracy. In 2007 the Superior Council of Magistracy (SCM) elaborated a rapport on the activity of the DNA. Even if the report was not finalised and confidential, two prosecutors from the SCM informed journalists that the DNA was criticized for illegal interceptions and of “originality” in the way of leading investigations. It was stated that prosecutors do not always apply the criminal code to the letter.

Sorting out the underlying issues, this case is about the under enforcement of the anti corruption laws but the frames promoted by the actors speak about the abuse of power and the competing use of interceptions, about the confidentiality of an investigation and the instrumentalisation of the corruption cases for political purposes. This case illustrates the working of new institutions set up to fight against corruption and to ensure the independence of the judiciary. It brings out the moral deficiency of the elites and the way they approach complex social, political and judicial issues. It underlines the political and societal culture about the functioning of a democratic state. The way the actors think the role of institutions

reflects the way these institutions are embedded in a domestic democracy. This case is about “judicial activism” if by this term we qualify situations when magistrates (in this case an employee of the DNA) go beyond the code and their prescribed duties (Volcansek, 2000: 126) but also how this kind of behaviour is banned by judges (in this case the Court of Appeal). The literature on the judicial activism highlights that “judicial activism tends to erode both the parliamentary democracy and the majoritarian institutions” (Holland, 1991: 2). It would be interesting to investigate what kind of judicial activism emerges in countries where citizens distrust political elites and institutions.

Conclusive Remarks for a Future Research Agenda

The mediatic rendition of the two judicial cases above presented offers a number of clues as for the way social and political actors frame the role of the judicial institutions and indirectly point to few elements that deserve further investigation to achieve a better understanding of the relationship that exists between judicial activism and quality of democracy. Principally and foremost, in this paper the concept of judicial activism is not used to reify the characteristics of the judicial behaviors that are associated with the expansion of the scope target by judicial actors. Phrasing it in different terms, we did not start from the presupposition that judicial actors are “activist” in the sense of featuring an objectively activist way of behaving. Rather we would argue that judicial actors are activists in the sense of being represented as institutional actors whose scope of action goes far beyond the tiny and narrow scope formally authorized by the law. Second, social representation, as argued herein, matter in any collective action. They do so as long as they make up the values and the standards against which institutional actions are assessed in terms of legitimacy and, consequently, of quality. The fact that judicial actors are represented by the media, by the politicians, or by themselves as actors whose actions should go beyond the strict and narrow verbum of the law is important in many respects, among which we consider here a couple of aspects.

- 1) The professional accountability. As the sociology of the organization never stopped to get us reminded, the definition of a role performed by a public official is not independent from the expectations and the self-representation the person who is performing such a role has vis-à-vis the instruments and the goals she/he is legitimized to deal with or to pursue. However, expectations are themselves not independent from the way a public official has internalized the professional standards

and the values on the base of which her/his role should be performed. The very construction of the role depends on a complex, but largely investigated by scholars, matrix of expectations of the group of reference, self-representation, individual creativity and collective standards. In that the group of reference comes out as the pivotal element to which turns the entire construction of a professional profile. This general statements hold also for judges and prosecutors. The process of framing and reframing the judicial role in terms of extra legal values undermines or at least puts under pressure the traditional relationship that tied judges and legal group of reference, judges and hierarchy. The more the extra legal values gain weight in defining the scope and the standards of the judicial actions, the more the judicial role is defined – by mean of the socially representation, not objectively defined – as activist.

- 2) The role of the media. In this paper we made a distinction, by following the bulk of the scholarship developed by the sociology of media, between media as producer and media as arena of frame. In this second case, we focused on the extra-mediatic producers, notably the judicial actors and the political actors. In order to understand the importance this distinction might have to cast light on the JA/QD relationship, a couple of points should be raised. In a democratic setting the media play an immensely important role in holding political institutions accountable. As Tocqueville was prophetically mentioning in *La Democratie en Amerique* far as in 1848, the media counterbalance the risk of the tyranny of the majority and more in generally the represent a weapon for the politicians as long as they distribute a public good, namely the public recognition. In this respect, by setting moral and reputational costs, the media are an actor of inter-institutional accountability, even if they do not play within the political arenas, but they stand as outsider within the organized civil society. This general view may do not fit perfectly with the reality, to the point that in some countries the media are captured by politicians dependently on the way the market of the media features an oligopolistic or a pluralistic pattern of property rights. Our point here is that when the media are producer of frame they play notwithstanding the tendency toward an activist mediatic representation of the judicial actors the role of a mechanism of political accountability. The more independent they are, the more they are able to exercise effectively such a role. When the frames are produced by the political and the judicial actors, the point to raise is slightly different. In this case, the

mechanism of accountability decreases in target and in effectiveness. However, the more convergent the representations of the judicial role adopted by the politicians and by the judicial actors are, the more these second ones – the judicial actors – are keen to recognize as a group of reference the politicians rather than the senior judges or the legal experts. In this respect, it may occur that not only judges perceive themselves as activist, but also they are expected by to be activist by the politicians. When this is the case, we suspect that the judicial activism, intended as a way of socially representing the judicial role as an extra-legally based role (eventually based on morality or on politics) touches heavily upon the responsiveness of the public institutions. The more the judges are accepted as extra-legally based role, the more their intervention into the public discourse impacts the political agenda and even more important the expectations citizens have vis-à-vis the politicians. In this case, judges play as actors of accountability, holding the politicians, to whose group of reference they long to belong, accountable to the norms of morality and public ethics they – the judges – have brought about.

Whether these hypotheses prove true or not, is to the empirical research to tell. However, it is of extremely high value any attempt to go beyond the current status of the scholarship on judicial activism and try to reconnect it to the broader literature on the quality of democracy. This is in a nutshell what we have tried to do in this first preliminary investigation, being aware that much harder work is to accomplish to make the leap from a comparison among two case studies to a comprehensive comparative analysis of political and social systems.

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