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Demand for Litigation in the Absence of Traditions of Rule of Law: An Example of Ottoman and Habsburg Legacies in Romania

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The paper investigates the impact of historical legacies of the Habsburg and Ottoman Empires on demand for litigation in contemporary Romania, reflected in the number of appeals in criminal cases. It finds that nowadays a key difference between these two historical zones is that in the Habsburg counties demand for litigation increases if the income goes up; in the Ottoman counties, however, the demand remains constant. Furthermore, the demand for litigation in poor counties is smaller in Habsburg than in Ottoman districts. We provide several explanations to this phenomenon and compare it to the anecdotal evidence of culture of judicial appeals in other countries.

Keywords: Law and Economics, Legal history, historical legacies, judicial performance, contextual factors, demand for litigation, Habsburg legacy, Ottoman legacy

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1. Introduction

The impact of historical legacies on contemporary development belongs to the most persistent topics of the studies of Central and Eastern Europe. The complex history of the countries of this region, characterized by strong historical heterogeneity in terms of formal and informal institutions,¹ makes it a fruitful field for investigation of how historical legacies shape the modern political and economic change (e.g. Pop-Eleches 2007a; Ekiert and Hanson 2003; Kopstein and Reilly 2000; Stark and Bruszt 1998; Cirtauta and Schimmelfenning 2010). The literature looked at both Communist legacies (e.g. Jowitt 1992; Chen 2003) and pre-Communist historical development (Brown 1996; Panther 1997; Kitschelt 2003; Winiecki 2004; Jahn and Müller-Rommel 2010). Several studies explicitly consider overlapping economic, cultural or political legacies and their differentiated impact on post-Communist political and institutional variation (Bennich-Björkman 2007; Dimitrova-Grajzl and Simon 2010), as well as influence of more proximate factors, such as external donors (e.g. Pop-Eleches 2007b; Mendelski 2009; Cameron 2007; Vachudova 2005; Linden 2002; Orenstein et al. 2008).²

One of the most prominent historical legacies identified in the literature is that of the Habsburg and of the Ottoman Empires. These two empires ruled over most of the countries of Southeastern Europe for centuries and were associated with very different organization of politics, public administration and economy. While the Habsburg Empire had a relatively effective bureaucracy and judiciary, the territories under Ottoman influence were characterized by an inefficient and corrupt public administration and court system (Sugar 1977; Jelavich 1983; Kann 1974). Somewhat simplified, one could describe the Habsburg legacies, if present, to be associated with *stronger rule of law*, and Ottoman legacies with *weaker rule of law, or even lack of thereof* (Rupnik 1999). A number of recent papers explicitly investigate the Habsburg and the Ottoman legacies (World Bank 2000; Roper and Fesnic 2003; Badescu and Sum 2005; Dimitrova-Grajzl 2007; Grosjean 2011; Grosjean and Senik 2011; Becker et al. 2011) and show that countries or regions, which were ruled by the Habsburg Empire in the past, are characterized by higher quality of contemporary economic institutions, lower

¹ The concepts of “institutions” and “culture” have overlapping and multiple meaning in social sciences. In this paper we define institutions, in line with North (1990), as rules constraining human behavior, both formal and informal. The notion of ‘culture’ is more debatable (Herrmann-Pillath 2010); we will use it to refer to particularly slow-moving (Williamson 2000; Roland 2004) and deeply rooted informal institutions, associated with collectively shared identities and mental models. Historical legacies are often associated with cultural effects, but they may also reflect themselves in formal institutions (e.g. survival of certain legal norms or concepts).

² On the one hand, the literature includes *inter-country studies*, which focus on post-communist variation in economic performance (e.g. Fish 1998; De Melo et al. 2001; Katchanovski 2000; Crowley 2004), democratic quality (e.g. Agh 1998) or politico-administrative differences (e.g. Grzymala-Busse 2002). On the other hand, *intra-country studies* examine inter-regional variation in those states which were under the domination of different empires before World War I (e.g. Ottoman, Habsburg, Russian Empires or Prussia), such as Ukraine (Katchanovski 2000), Poland (Zarycki 2007; Zukowski 2004) and Romania.

corruption, stronger civil society, improved financial development and higher trust into the government today. In particular, Becker et al. (2011) show that across Central and Eastern Europe *Habsburg legacy is associated with higher trust into courts*.

However, in spite of these recent studies, the evidence on the persistence of legacies is still limited and, to some extent, contradictory (see Sindbaeck and Hartmuth 2011). In particular, it is not clear how the effect of historical legacies interacts with other contemporary variables. Thus, further research, investigating how Habsburg and Ottoman legacies affect various aspects of social and political life in the Southeastern European countries, is necessary. A particularly interesting dimension is from this point of view the *demand for litigation*. While trust in justice measures the citizens' perception of the judicial impartiality (Jackson et al. 2011), demand for litigation looks at how often the courts are actually used. This variable is important for social and economic development for several reasons. First, frequent use of courts could potentially serve as a proxy for greater *legal experience and knowledge* of the population. The lack of legal knowledge is an important obstacle for economic development (Hendley et al. 1997). Second, frequent use of courts is associated with *high economic costs* drawing resources away from productive activity. Mismatch between personal and social costs could be associated with excessive litigation (Shavell 1981). Thus, high demand for litigation may be associated with both advantages and disadvantages.

While there is empirical evidence regarding how Habsburg and Ottoman legacies influence the trust in courts, the link between this variable and the actual demand for litigation is ambiguous (Hendley 2012). For the case of appeals in criminal justice, for example, if the accused is uncertain as to how their sentence should look like, high trust into courts should result in lower likelihood of appeals (the court decision is more likely to be accepted). However, if the accused has certain prior belief about how the court decision should be, and the court decision deviates from it, if the trust into courts is high, it could lead to higher likelihood of appeals (in this case, the accused could consider the decision of the trial court as mere mistake, which could be corrected by trustworthy court system). Thus, the lack of unambiguous mapping from trust to demand for litigation, combined with importance of the latter, makes investigation of determinants of demand for litigation a relevant research task.

To answer our research question, we conduct a within-country study of Romanian regions in which we compare the effect of Habsburg and Ottoman legacies on demand for litigation by using a novel dataset of criminal cases in courts of appeals (Tribunals). The within-country analysis is useful, first, because it improves identification (Snyder 2001), and second, because heterogeneity of formal law makes cross-country comparison of data on demand for litigation very difficult.

The paper finds that the historical legacies *have a strong and robust effect on demand for litigation*. We show that the historical legacies have a *conditional* effect depending upon the level of economic well-being in the county. In poor counties, Habsburg legacies are associated with significantly lower number of appeals than Ottoman legacies; however, the increase of income results in the growing number of appeals in the Habsburg counties, but not in the Ottoman ones. Our results seem to be consistent with the anecdotal evidence of what is

sometimes called an *appeal culture* in the legal history; we provide qualitative evidence along these lines based on a number of interviews carried out in Romania.

As a secondary contribution to the literature, we also investigate the role of an additional factor potentially relevant for the persistence of historical legacies – the role of ethnic minorities. Therefore, this paper also contributes to some recent research (Darden and Grzymala-Busse 2006; Wittenberg 2006; Peisakhin 2010), which concentrates its attention on pinpointing the underlying causal mechanisms which link the past (historical legacies) to the present. We find, however, that ethnic minorities do not contribute to the effect we observe.

The paper proceeds as follows. The second section provides the theoretical basis for our discussion. The third section reviews the legal system of the Ottoman and the Habsburg territories of Romania. The fourth section describes the unification efforts of the post-World War I Romanian governments and discusses possible channels of legacy persistence. The fifth section presents the dataset and the empirical approach we use and derives the main hypotheses. The sixth section reports the results, and the seventh section discusses our findings. The last section concludes.

2. Rule of law and demand for appeal in criminal justice

As a starting point of our discussion, it is necessary to devise a set of hypotheses predicting how rule of law should affect our subject: the likelihood of appeals in criminal cases. Specifically, we focus on how likely a *defendant* is to appeal. In order to develop our hypotheses, we will try to explain human behavior in terms of two possible motives: instrumental and expressive behavior. Instrumental behavior focuses on extracting wealth or maximizing income; expressive behavior focuses on choices reaffirming individual's identity (Lin 2002; Hillman 2010). Institutional environment affects, first, the extent to which expressive or instrumental behavior is present, and second, the demand for appeal litigation, which can be derived from both types of behavior.

Let us start with how the legacies of rule of law should affect the instrumental demand for appeals. An influential perspective of the Law and Economics interprets a legal claim, from the point of view of the rational choice perspective, as an investment opportunity pursued by the litigant based on the expected benefits and costs (Landes 1971; Posner 1973; Cornell 1990). The costs of litigating are determined by case-specific circumstances, but also by institutional arrangements (Shavell 1982; Hughes and Snyder 1995; Chappe 2012; Barendrecht et al. 2006). Thus, the appeals should be more likely if the costs of the appeal are lower than the possible improvement of the sentence the defendant can expect (e.g. reduction of the fine). In the absence of the rule of law, two arguments suggest that the appeal rate should be lower in criminal litigation. First, the lack of the rule of law makes it very difficult to fight against governmental predation in the court; criminal justice may become a tool of rent-extraction for bureaucrats in the law enforcement and interest groups connected to them (Volkov 2004),

and the judges (themselves public servants) may be more inclined to side with their fellow bureaucrats, twisting the legal procedure.³ If that is the case, appeal is associated merely with waste of resources by the defendant, which has no chances against the bureaucracy virtually unconstrained by the law.⁴ Second, in an environment of weak rule of law the defendant may have higher chances at solving the problem she encounters by paying bribes or using informal connections in the bureaucracy (if they exist), which are preferred to the formal appeal (the latter shifts the decision on the higher court, where the costs of bribes may be higher).⁵

However, there are also reasons which make the appeals more likely in the presence of the weak rule of law from the point of view of instrumental behavior, at least as long as the costs of appeal are relatively small. Decisions of courts can be perceived as purely coincidental, random or influenced by extra-legal considerations (e.g. personality of the judge). Then the instrumental behaviour suggests that it makes sense to appeal even if from the legal perspective the chances of the case are very low – simply because the higher-level court can by random chance overrule the decisions of the lower level court (for example, because the judge interprets the law differently, because one managed to get better access to the judge, because the caseload is different and the judge may spend more time investigating the case etc.).

The effects of the rule of law on instrumental behaviour are likely to differ depending on income. In a rule of law environment, larger income implies larger litigation resources, which could make the appeal more successful at least in borderline cases. In fact, there exists a substantial literature, pioneered by Galanter (1977), showing that litigation resources (and, particularly, income) crucially increase the litigation success in jurisdictions with established rule of law, like the United States (for the courts of appeal see Songer and Sheehan 1992).⁶ Thus, higher income should lead to more appeals.⁷ In the jurisdictions with deficits of the rule of law, however, this effect should be weaker. On the one hand, larger resources provide even larger opportunities for bribes, which may be a much easier way to resolve the problem than the appeal process. Sonin (2003) and Polishchuk and Savvateev (2004) argue that high

³ An example of the problems appearing in this case is Russia, where prosecutors have massive formal and informal pressure tools against the judges, which, as a result, very rarely rule against the prosecution (with the share of acquittals being diminishingly small) (Paneyakh et al. 2010).

⁴ Even if the appeal is successful, the lower-level court can again rule in favor of the prosecution: in the Russian case there have been examples of repeated sentences made by the lower-level court in spite of repeated decisions of the appeal court to overrule them.

⁵ A large literature suggests that if bribery is self-enforcing: in an economy or society where corruption is widespread, more agents find it necessary to use bribes and the relative success of bribers vs. non-bribers goes up (see e.g. Bardhan 1997; Aidt 2003).

⁶ More specifically, the literature argues that the effect is driven by *relative* litigation resources. However, since the criminal cases in all parts of Romania involve dealing with the same centralized government, which has the same resources, it should not be a problem for our analysis.

⁷ Jacobi (2009) uses economic strength explaining the differences in demand for litigation (in all areas of law) across the US states, similarly to this paper. We should note that our argument relates to the demand for *appeals* by *defendant* in criminal proceedings. Eisenberg et al. (2012) remark that the effect of income on criminal litigation may be more complex, since income may also affect the number of crimes committed. In our empirical investigation, we will explicitly control for that.

income may make the rule of law less attractive, because of discretionary ability to control the public decision-making. On the other hand, appeals may attract attention of predatory bureaucracy. Behaviour according to the law and use of legal procedures in societies with weak rule of law may be risky – they simply make the agent more visible and thus increase the risk of expropriation (Libman, Schultz and Graeber 2013). It may be cheaper to accept the rulings of the trial courts and to pay fines than to risk the unnecessary attention in case of appeals. Finally, if the appeals are driven by the hope for a random chance of success (as hypothesized above), litigation resources should not affect the decision to make an appeal: the litigation outcome is perceived to be purely stochastic. Thus, somewhat simplified, we should expect *growing number of appeals if the income increases* in the societies with strong rule of law and *stable or even lower number of appeals if the income increases* in the societies with weak rule of law.

Expressive behaviour, as mentioned, serves primarily the goal of reaffirming one's identity. This identity could be reaffirmed in one's own eyes (in this case individuals extract utility from perceiving themselves as having certain identity), but also in the eyes of others. In case of appeals, the logic of expressive behaviour is likely to be straightforward. An appeal may be made to reaffirm one's self-identification as an honest person, who was unjustly sentenced by the court (for a similar discussion, see Libman, Herrmann-Pillath and Yadav 2013). Otherwise the individual accepts one's definition as a "criminal". In this case whether one actually wins the appeal or not may be unimportant; the very fact of appealing may be sufficient to reaffirm one's identity. This behaviour is more likely to happen if the general trust into courts is low: then individuals are more likely to interpret any decision of a trial court as unjust or merely as a tool of corruption in the hands of bureaucrats, and appeals may be seen as a signal of a particularly unjust decision, where further fight is necessary (as mentioned, even in the weak rule of law environment there is always a certain probability of just decision – by random chance). Expressive behaviour can be associated with *subjective perception of justice*: even if individual is aware that according to the law her chances of success are low, she still appeals because she *perceives* herself to be "on the right side" and hence intends to act accordingly. From the point of view of expressive behaviour appeals are unrelated to litigation resources or income, since success in the appeal court is not the main goal. Thus, it seems to be reasonable to conclude that *expressive appeals should be more frequent in the environment of weak rule of law*, and that *the number of expressive appeals should not change if income goes up*.

Summing up, appeals in criminal jurisprudence could be *less frequent due to the lack of the rule of law* (because of lower chances to win against predatory bureaucracy and use of corruption instead of formal channels), but they could also be *more frequent due to the lack of the rule of law* (because of perception of jurisprudence as stochastic and larger role of expressive behaviour, leading to more appeals). It leads to empirical puzzle, which we investigate in this paper. Furthermore, demand for appeals in the rule of law environment should become more pronounced if income goes up; the demand for litigation in case of the lack of rule of law should not change depending on the income. These two statements provide two major empirical questions our paper intends to investigate, using the experience of Romania.

3. Litigation and appeal process in the Habsburg and Ottoman parts of Romania

3.1. Ottoman and Habsburg rule in Romania

The present-day Romanian territory has been an area of competition of great powers throughout its history. From the fourteenth century on, various parts of it have been under control of the Ottoman Empire, either directly, or through a system of suzerainty relations with local rulers. In late 17th century the north-western part of the country, Transylvania,⁸ became part of the Habsburg monarchy; the eastern and southern parts of the country, Wallachia and Moldavia, remained Ottoman vassal states. In the mid-19th century Ottoman dominance was crippled; in 1859 Wallachia and Moldavia were united (forming the basis for the modern Romania), and in 1877 they declared independence from the Ottoman Empire. It was as late as after World War I that Transylvania was integrated in the Romanian state, alongside with Bukovina, another part of the Habsburg Empire, annexed as part of the divisions of Poland in the 18th century (see *Appendix B*). Thus, both Habsburg and Ottoman rule over various parts of Romania stretched for at least several centuries, resulting in significant institutional and politico-economic differences. Looking at the descriptive statistics of the first half of the 20th century (see *Appendix B*) clearly reveals the dichotomy between the two parts of Romania. The territories of the former Habsburg Empire were economically and structurally better developed, more diverse in terms of ethnicity and religion, and had a more literate population than the Ottoman regions. In contrast, people in Ottoman regions (Moldavia, Wallachia and Dobrogea) were on average poorer, ethnically less diverse, mostly Orthodox and less literate.

What is more important for us is that Habsburg and Ottoman regions had significant differences in terms of their institutional settings, though due to different factors. In some sense, it is possible to speak about *indirect Ottomanization* and *direct Hungarization* (*Magyarization*). In contrast to Habsburg territories, the Ottoman principalities Wallachia and Moldavia had certain autonomy and were institutionally less penetrated by the Ottoman Empire. As vassal states, they had to pay high tribute (taxes) to the sultan but were able to keep their own nobility and princes (instead of Ottoman-Muslim governors) and their former financial, politico-administrative and judicial structures (Maxim 2001: 20f; Sugar 1977: 281). Romanian principalities did *not* adapt the Islamic legal institutions of the Ottoman Empire or the *millet* system of governance with multiple legal regimes for different ethnic groups (Kuran 2011). “Ottomanization” of Wallachia and Moldavia was done more indirectly with the help of Phanariots, Ottomans of Greek origins, who ruled the principalities and were appointed by the sultan.

⁸ Throughout the text Transylvania is defined broadly, including Banat and parts of Bukovina, unless not explicitly stated otherwise.

In contrast, Habsburg territories were fully incorporated into the Habsburg Empire and also more directly influenced by its assimilation, centralization and Magyarization practices (Seton-Watson 1925: 104). Among other things, being part of the Austria-Hungary implied that this region was subject to the Hungarian and Austrian law and was ruled by relatively efficient and well-trained Habsburg bureaucracy (including judges). Habsburg territories were also subject to the modernization reforms implemented by the Danubian monarchy throughout the 18th and the 19th centuries and to Magyarization activities of non-Magyar population towards the end of the 19th century. Thus, two parts of Romania were characterized by substantial differences in the practices of jurisprudence and appellate litigation.

Probably, the major difference between the Ottoman principalities and the Habsburg provinces was that the former were subject to an *extremely frequent change of rulers*, while in the latter governors changed substantially less often. *Table 1* summarizes the average tenure of Phanariot princes (hospodars) and Habsburg governors over one and a half centuries. On average, Phanariots ruled for 2.3-2.4 years; the tenure of the Habsburg governors with 6.6 years was almost three times longer.⁹ This effect persisted throughout the period of Phanariot rule over Romanian principalities. In addition, Moldavia and Walachia occasionally came under the Russian and Habsburg occupations¹⁰ and were ruled by military commanders. These frequent changes affected the entire bureaucracy: in the Ottoman principalities members of the Divan¹¹ and high-ranked judges and officials (boyars) changed almost every year, i.e. even more frequently than the princes (Wilkinson 1820:48). The annual replacement of judges was described as a system of a “perpetual renovation” (Bargrave in Iorga 1933:168). Habsburg bureaucrats typically had a much longer tenure. As a result, the optimal appeal behavior in the Habsburg and in the Ottoman parts of Romania was strikingly different, as it is outlined in what follows.

⁹ The period of rule of Habsburg Emperors in the 18th and 19th centuries was even longer, with only 9 rulers in 1705-1916.

¹⁰ Under the Phanariot rule Wallachia was occupied two times by the Habsburg Empire (in 1716, 1789-1790) and four times by the Russian Empire (1768, 1769-1770, 1806-1812, 1828-1834). Moldova was occupied 4 times by the Russian Empire (1739, 1769-1774, 1788-1791, 1806-1812) and once by the Habsburg Empire (1787-1791).

¹¹ The Divan was the Highest Court in the Ottoman principalities. It was composed of boyars, the Metropolitan bishop and the prince as its head.

Table 1: Average tenure of rulers in Ottoman principalities (Moldavia and Walachia) and in Habsburg Transylvania, years

Period	Moldavia	Walachia	Transylvania
1700-1750	2.71	3.42	9.11
1750-1800	2.20	2.25	4.36
1800-1850	2.24	1.62	7.60
1850-1870			4.05
Average	2.39	2.34	6.59

Note: the calculation was made specifically for the following periods: Moldavia – 1710-1753; 1753-1801, 1801-1828; Walachia – 1716-1752, 1752-1801, 1801-1828; Transylvania – 1690-1755, 1755-1787, 1787-1851 and 1851-1867. We use these specific time periods to accommodate the fact that tenure of rulers started at ended at different point of time (for example, György gróf Bánffy de Losonc ruled Transylvania in 1787-1822; thus, it would be unreasonable to artificially divide his rule into two periods in 1800). We include all rulers, including interim ones; if the ruler was had several discontinuous terms, each of them counts separately (this is very often the case for Romanian principalities: the same prince could have been appointed for several years, than leave his position for an number of years to another prince, and then return), since for our theoretical logic this type of appointments should produce the same effects leading to high number of appeals. Russian and Austrian occupation periods for Moldavia and Walachia do not count; Ottoman occupation period is included. The starting point for Walachia and Moldavia is the appointment of the first Phanariot prince; the ending point is the introduction of Organic Statute, which limited the Ottoman influence on the principalities. For Transylvania, the ending point is the Austro-Hungarian Compromise of 1867.

3.2. Litigation and appeal in the Ottoman principalities

Litigation: The “perpetual renovation” of princes and boyars resulted in several pathologies of the rule of law and judicial practice (see Radulescu 1923; Kantemir 1771:234; Langeron 1791 in Bezviconi 1947:149). First, laws became instable and changed often with the change of princes. Increased changes in the legal framework began with the replacement of the secular codes of the seventeenth century, e.g. the *Pravila de la Govora* (1635), *The Law of Vasile Lupu* (1646), and *Law of Matei Basarab* (1652), by the codes of Romanian and Phanariot princes, such as the first Phanariot code *Pravilniceasca condica* by Ypsilanti from 1780, the *Manualul de legi* by Mihai Fotino (1785), Alexandru Donici’s *Manualul de legi*, 1814 (Manual of laws), the *Legiuirea Caragea* (Caragea’s law) from 1818, the Code Calimach from 1818, the penal procedure under Mihai Sutu (1820) and the *Criminaliceasca condica* by Ionita Sandu Sturza from 1826. The Code Calimach and the Law of Caragea were the most enduring and were only replaced in 1864/1865 by the Romanian Civil and Penal Codes (see Georgescu 1991:95 and 138).

Second, laws became incoherent, i.e. several legal frameworks existed at the same time. In Walachia, for instance, there were three different legal codes (customary law, Caragea code and Roman law), producing different verdicts in similar cases and allowing for abuse in practice (Zacharia 1840:419; Pertusier 1822:67). In addition, the legislation was amended

through law-decrees. Furthermore, the *claim preclusion* and the *non-retroactivity* principles, prohibiting the already decided cases to be revised again, were ignored (Radulescu 1923:41). Similarly, after unification in 1859, legal incoherence and instability were reflected in the way the new penal code was constructed and applied. The new code consisted of the French Penal Code and was complemented by the old Romanian law and various other sources (Radulescu 1923). In the aftermath the new penal code were subject to frequent changes and amendments.¹²

Third, most laws were not only incoherent and unstable but also complicated, unclear and difficult to understand for the majority of the subjects (approximately 90% were peasants). Even the boyar judges did not understand them. Since 1739 “the title boyar became simply a rank, connected neither to the ownership of estates nor to position as a high official, but merely to the goodwill of the hospodar who granted it” (Georgescu 1991:102). The position of a judge was often sold to the highest bidder, without any regard to the qualifications of the judge; thus, most judges did not have legal education and just bought their judicial and administrative posts as a source of income. Lack of education, however, did not hinder the boyars to abuse the unclear laws in practice to the detriment of justice (Laurencon 1822:16; Neigebaur 1848: 50 and 74). Due to very short-term tenure, no incentive to accumulate legal knowledge on the side of the judges and boyars existed. As a result, legal knowledge also did not matter in terms of success of the litigants (since the judges were uninformed themselves); due to high corruption, money became the major mean of obtaining justice.

Fourth, even if written rules existed they were not respected in practice and allowed for biased interpretation by the Divan (Laurencon 1822:17). The position of the prince was particularly strong. He had a legislative, an executive and a judicative role (Zacharia 1840:419). The prince, who was above the law, had strong discretionary absolute power. He could remove judges and decide according to his own will (Georgescu 1991:79). As the head of the Divan, the prince could always reject the decision of the boyars if he considered that the decision was not based on the law or if his personal interests were not compatible with the decision (Lakovenko in Filitti et al. 2004:890). The French diplomat Karl Friedrich Reinhard (1761-1837) described the Phanariot princes as “Christian pashas” who had absolute power over the judicial cases of their subjects. Judicial verdicts which were often oral reflected the absolute and unlimited will of the prince (Reinhard in Filitti et al. 2004: 253). The strong position of the prince was described by a contemporary English merchant and consul as follows:

“The prince holds a court every day, where he sits for a short time, surrounded by his officers, to administer justice and to decide controversies between his subjects. His commands are received with the most obsequious deference: he has full power of life and death over all; and inflicts whatever punishment he pleases on the guilty or the disobedient. No complaints are received at the Ottoman Porte against this authorized agent of government, even for the murder of an innocent person, whatever may have been his rank in society.” (Thornton 1807: 409).

¹² The Romanian Penal Code was changed in 1874, 1882, 1893, 1895, 1900, 1910, and 1912 before World War I.

“It is in conformity to these laws that all suits are said to be judged, and the sentences framed; but the prince interprets them in his own way, and his will, in fact, is the only predominating law.” (Wilkinson 1820:49).

Fifth, the judicial system suffered from corruption and arbitrariness. Since the selection of judges was not merit-based, and the appointments were short-term, there was of course a very strong incentive to behave in a “roving bandit” (Olson 1993) style and to concentrate on rent extraction to the highest extent possible. Under the Phanariot rule every high office (including that of a judge) “became a principal means of enrichment and a direct invitation to corruption” (Georgescu 1991:79). Lack of impartiality and corruption at courts in Moldavia and Wallachia is reported in several traveler accounts from the 19th century. According to Reinhard’s eyewitness accounts, corruption was high. As a rule, the litigant who offered a higher bribe won the case (Reinhard in Filitti et al. 2004: 254). Another traveler in Wallachia pointed to the insufficient independence of judges and the high corruption at tribunals, which was a “guaranteed source of income” (see Bargrave¹³ in Iorga 1933:157). Corruption remained an issue after unification of Romania (see Samuleson 1882:101). According to Thornton,

“The laws of Moldavia and Wallachia are professedly those of the code of Justinian, but they are neither studied, understood, nor followed. All suits are determined according to precedent and established usage, which are unwritten and arbitrary. The judges constantly refer to the practices of the court and capricious traditions, so that all decisions are ultimately left at the mercy of the reigning prince. Hence naturally arise confusion and disorder for as the sentence of a prince is not binding on his successor, contestations are interminable, and are continually reproduced.” (Thornton 1807:422).

In sum, the Ottoman principalities under the Phanariot rule suffered from several interconnected pathologies: frequent changes of legislators (princes) and judges led to, on the one hand, legal instability and incoherence, and, on the other hand, increased the incentives to behave arbitrarily and to extract rents from the temporary position.¹⁴ Given this personal and legal instability, insecurity was high and long-term planning was hardly possible (Boner 1868: 471). This system had substantial implications for the appeal process.

Appeals: *Appendix G* describes the appeal process in the Ottoman principalities. One can see that the appeals were uncomplicated and cheap. In line with our theoretical discussion, *each change of the prince made the revision of the case possible* and the decision of the previous

¹³ According to Filitti et al 2004, this statement should be attributed not to Bargrave, but Wyburn, the author of the description of Wallachia. For the Romanian version of the travel account see Wyburn (1829).

¹⁴ The growth of corruption in the Ottoman principalities could have been associated not only with the frequent change of rulers and strong incentives for rent extraction, but also with direct influences of the Ottoman Empire, where the litigation system suffered from strong biases and was highly corrupt as well. Due to the long interaction with Ottomans and Phanariots, Romanians from the principalities renewed or reinforced certain undesirable habits and attitudes to organize social, political and economic relations in a more informal way, e.g. through the use of *bakshish* (bribe) and nepotism (although, as mentioned, former legal institutions were not transplanted). However, the extent of this learning is debatable, since many of the features could have been observed already before the Ottoman conquest (we will discuss this problem in what follows; see also Maxim 2001: 208).

prince could have been overruled. Cases could be reopened and reexamined under the same ruler or under his follower (Reinhard in Filitti et al. 2004: 253). Thus, every new prince was like a new lottery ticket for the person who lost a case at the lower court instance (although the chances to win this lottery were unequally distributed and depended upon bribes and informal connections). Since the princes changed very often, and in an unpredictable manner, appealing a court decision was a very attractive option.

Furthermore, appealing was stimulated by the princes themselves who encouraged their subjects to submit complaints about “unjust” verdicts and even small petty crimes, guaranteeing open doors for everybody (e.g. see Ioan Caragea’s manifesto from 25 November 1812, cited in Urechia 1898:276). The princes removed potential barriers to appeals: the judges were forbidden by law to curse and to constrain those litigants who wanted to launch an appeal (Onisor 1921: 244). This was done because the princes portrayed themselves as representatives of Divine justice to whom every subject could make appeals if he was unfairly treated. By portraying themselves as just and fair -in contrast to the arbitrary and corrupt judges- the princes legitimized their rule (what was quite important due to high instability). In reality, however, the princes’ justice was closely linked to the corruption and influence of boyars, producing highly biased decisions. Furthermore, there were strong incentives for the often indebted princes and their judges (*zapcis/ispravnicis* at the first-instance courts, boyars at the Divan) to allow a high number of trials and appeals as every case in appeal was both an official (commission¹⁵) and non-official (bribe¹⁶) source of income (Bargrave in Iorga 1933; Iakovenko in Filitti et al. 2004:885).

The outcome of the existing formal law and informal incentives was a perpetual growth of the number of appeals. More than 6000 pending cases were produced at the Divan in the late 18th century. In the early 19th century the Divan accumulated already 21,807 pending cases (Neigebaur 1848:74). According to Laurencon it could take several decades to resolve them (Laurencon 1822:121).¹⁷ The established practice of resuming court cases despite a final verdict of the prince lead to the phenomenon of “endless trials” (Laurencon 1822:30). Occasionally, up to 10 appeals of one and the same case were launched (Lagan 1828 in Holban 1930: 170). By doing so a litigant obtained a new chance to win the trial. The litigant could manipulate it by bribing an influential boyar, i.e. his personal advocate or protégé at the Divan. At the end, however, the outcome of the trial depended on the prince (who often did neither know Romanian nor the national customs – as mentioned, these were appointed rulers of Greek origin) or the great *logofat* (the Minister of Justice) who decided at his own discretion (Alexandresco 1898: 475).

¹⁵ For civil cases, for example, the official commission was 4% of the value of the litigation objects (see Reinhard in Filitti et al. 2004: 254)

¹⁶ In practice the judges as well as the prince demanded 50% of the sum claimed (half of the estimated damage). (Bargrave in Iorga 1933:159)

¹⁷ This was plausible as the boyar judges and the prince did not work every day (penal cases were examined only once a week at the Divan).

As a result of this system of endless appeals, even small and ordinary cases could become very expensive (because of the high trials costs) and very lengthy (because of the possibility of endless appeal). Once a case started, the quarreling parties were entrapped by their initial sunk costs (bribes etc.), and a vicious circle of appealing and accumulating debts in order to influence the decisions of the boyars and the prince. Peasants, who did not have the financial means, obligated themselves to work for the boyars (the judges at the Divan), and ended up in a “debt and appeal trap”. Appeals were frequent, and parties often litigated over banal cases with small initial sums. These small monetary damages could however evolve into financial ruin because of the considerable costs of bribes and the long duration of trials (see Bargrave in Iorga 1933). Bargrave reports that corruption during the appeal process of criminal law suits was particularly pronounced:

“All punishments for all offences from the highest (murder for instance) to the very lowest are commuted by the payment of fines, and no offender, or robber even, is actually punished unless the party injured purchases his punishment from the aga (minister of the police, a Greek), at Buccorest, or from the ispravnic of the district, in the country. And the sale of these punishments, mitigations and pardons, which are all arbitrary and the price of which depends entirely upon the pecuniary capability of the person who applies, form the principal feature in the revenues of these officers.” (Bargrave in Iorga 1933:159-160).

3.3. Litigation in the Habsburg territories

Unlike the Ottoman principalities, in Transylvania the judicial system (including the appeal process) functioned relatively well, despite certain deficits. The main legal framework (*Corpus Juris Hungarici*), although lacking systematic interrelationships, remained relatively stable in its core and was expanded only gradually through judicial practice and imperial decrees (Springer 1840: 101; see Schuler von Libloy 1848). The Hungarian Constitution was based on many sources (e.g. own customary law, Austrian and German legislation), it followed fundamental rights (*Grundgesetze*) contrary to precise formal legal norms (*Rechtsnormen*) and was relatively well elaborated. The legal framework, however, still consisted of a mixture of royal decrees, privileges, statutes, case law, customary law, Hungarian, Saxon and Austrian law.¹⁸ It was described as vague, ambiguous and unclear (Fessler 1825:253-254; Springer 1840:102). Similarly, the diverse appeal possibilities¹⁹ served as delaying tactics and were misused by the lawyers of the litigants to delay law enforcement (Dauscher 1869: 217).

Nevertheless, several Habsburg emperors, such as Maria Theresa, Charles III and Joseph II launched judicial and legal reforms (e.g. codification commissions to make the law more coherent, introduction of judge’s and lawyer’s examinations) which aimed to mitigate the existing pathologies (e.g. legal incoherence, differences in the quality of judges and lawyers, slow

¹⁸ Hungary and Transylvania did not have a written criminal code until the middle of the 19th century. The Austrian penal code entered into force in 1852, thus relatively late.

¹⁹ E.g. recurs, partial appeal, revocatio procuratoris, prohibita, opposition, repulsion etc.

courts) (Fessler 1824: 254 and 524; Domin-Petrushevecz 1869:187). Furthermore, the Hungarian legal framework contained detailed regulations on judicial independence (non-removability of judges, immunity, non-transferability) and on different judicial conflicts of interest such as nepotism and corruption (incompatibility). Judicial accountability over judges and their performance (e.g. punctuality, respect of law) was assured by the Ministry of Justice and disciplinary councils (von Ferdinandy 1909).

What is even more important is the fact that in the Habsburg case the pathologies of the legal system were mitigated by well-educated legal scholars, lawyers and judges. While lawsuits were occasionally delayed by the use of “legal quibbling” (Fessler 1825:264), the role of skilled lawyers was crucial during the appeal of cases. Often they could bring more light into the jungle of paragraphs and thus provided sophisticated, rule-based justice for their clients. The strong role of an educated judicial cast (inclusive legal scholars) reinforced the formalistic approach to justice through procedures and rules. For instance, notaries had an active role during appeals. They had to read the sentences of the lower instance courts. All documents required stamps of seals. Furthermore, legal scholars (professors, judges, lawyers) were employed in codification and reform commissions, which were created to improve the system. In practice those litigants who had the better and more expensive lawyers had also a bigger chance to win the case. Thus launching an appeal with the help of a prestigious star lawyer increased the probability to win a case. In short, legal education *and* money mattered for obtaining justice; in the Ottoman case, as mentioned, it was only money – legally ignorant judges and boyars paid little respect to sophisticated judicial arguments.

Thus, the diversity of laws, the formalistic approach to jurisdiction as well as the differentiated and cumbersome appeal process made the Hungarian judiciary slow and uncertain. Nevertheless, the quality of judiciary was higher than in the Ottoman territories due to both effort of the central government, less frequent changes of governors and professionalization of judges and much stronger role of lawyers.

The Habsburg territories also strikingly differed from the Ottoman ones in terms of the appellate litigation. Unlike Phanariots, who encouraged appeals, Habsburg law explicitly discouraged those and made appeals extremely costly. *Appendix H* shows the numerous legal and financial barriers established to prevent the growth of appeals. As a result, the appeals were also substantially less frequent. According to a central register for Hungary from 1791, there were a total of 3483 pending cases at the royal court (*konigliche Tafel*), i.e. the second highest court instance. Roughly half of these cases were appeal cases and the other half arrived there as first instance cases (*Tabularprozesse*). In 1810 there were 1875 first instance cases and 1494 appeal cases at the royal court. The number of appeal cases was thus much lower than in the Ottoman Principalities and even in other Western countries (e.g. in 1795 Denmark and Norway had 25521 and three years later 9653 pending cases). The cumbersome and expensive appeal has prompted the low and high nobility to seek alternative dispute resolution, for instance through mediators or silent settlements (Schwartner 1811:268-276).

4. Formal unification and persistence of informal institutions

4.1. Centralization effort of the Romanian state

After World War I, Transylvania became part of the unified Romanian state, which marked the start of the centralization process. Romanianization of Bukovina and Transylvania meant a break at the elite level: judges, lawyers and bureaucrats from the Ottoman part of Romania replaced those from the Habsburg part.²⁰ The educational system was centralized as well. Most previously Magyar state schools were taken over by the Romanian state.²¹ Higher education became completely Romanianized (Macartney 1965: 308). This kind of break at the formal and personal level was further accentuated through the general emigration of Hungarians and Germans from Transylvania.²² The unification of Romania was followed by legal unification and the uniformization of the penal code as well as the creation of centralized law for the centralization of judicial organization (1924) (see Goga 2006). The *de facto* legal unification though was implemented only by mid-1940s, still leaving substantial differences in terms of how courts operated in different parts in Romania. Over this period, the described patterns in appeal behavior of two parts of Romania persisted. *Figure 1* reports the appeal rates in the Habsburg (Transylvania) and Ottoman (the so-called Old Kingdom) parts of the country in 1939-1940, i.e. almost twenty years after unification. One can see that the Ottoman rate of appeals in all cases, and also in criminal cases, is at least two times higher than the Habsburg one, suggesting that Romanian citizens from the two unified regions had different attitudes towards judicial decisions.

²⁰ This policy was closely linked to the attempt to expel the ethnic minorities from the government system. In Bukovina, for instance (which had with 59% the biggest percentage of non-Romanians until 1918), many Jews, Germans and Ukrainians lost their positions in the public in the public administration, the judiciary and the educational system or were deported to other Romanian regions (1920s) (Hausleitner 2001: 19). Similarly, in Transylvania, where in 1918 only 4% of magistrates and judicial staff were ethnic Romanians, almost all Hungarian judges were replaced by Romanian judges or lawyers (Papp 1945:10ff). However, while most politicians in elected councils became Romanians (even in Targu-Mures a town with 75% of Hungarians), there was more continuity in the public administration and among the judiciary where minorities succeeded to keep their posts until 1932, when more systematic purges began and when it became much more difficult for minorities to enter the public services (Macartney 1965: 293-296). For a detailed description of the replacement process in the judiciary, see Papp 1945 and Iancu 2006).

²¹ However, the confessional school system was not abolished and many primary and middle schools were left in the hands of minorities. In 1934, in Transylvania, Magyars had 993 primary schools and Germans 399.

²² To give an example, the numbers of Magyars and Germans declined steadily. In 1910, out of a total population of 5.265.444, there were 1.704.851 Magyars and 559.824 Germans in Transylvania (including Maramures). In 1930, out of 5.543.250 the number of Magyars declined to 1.353.675 and that of Germans to 543.622 (Macartney 1965: 253). The 2002 census indicates the presence of a Hungarian minority of 1.4 million people (about 7% of the population); the German minority with 60,000 people makes out less than 0.5%.

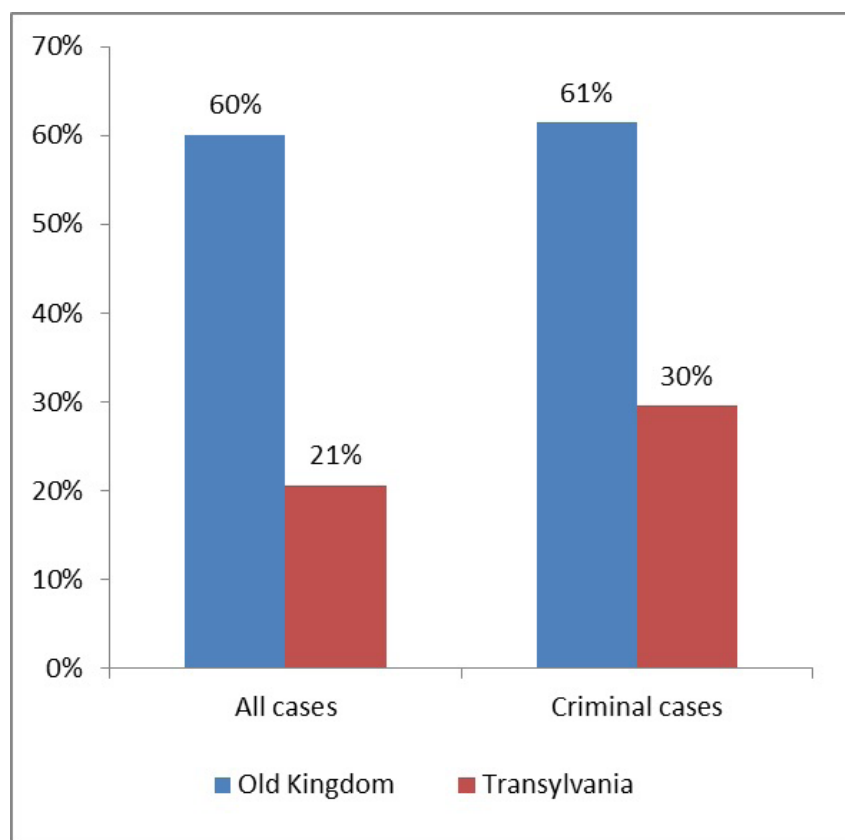


Figure 1: Appeal rates (number of appeals divided by number of cases in trial courts) in 1939-1940 in Transylvania (former Habsburg territories) and in the Old Kingdom (pre-World War 1 Romania, former Ottoman territories)

Source: computed based on Institutul Central de Statistica (1940)

The Communist rule after World War II was associated with even greater centralization – as in many other Communist countries, eventually removing the remaining elements of formal differences between the regions of Romania. The concept of the unitary state remained the fundamental principle under the new Communist regime (Graham 1982: 83). It was accompanied by a centralist and hierarchical organization of the government (including the bureaucracy and the judiciary). Former principles of judges (impartiality and rule of law) were replaced by the new principles (obedience and discipline). In his role as a propaganda agent, the judge had to promote conformity among the citizens and the judge himself was made conform and obedient in newly created “higher juridical schools” and “short-order one-year law schools” which replaced the previous legal education at universities (Veniamin 1956: 303). These newly created law schools were created in the biggest Romanian towns, such as Bucharest, Iasi and Cluj. Initially, legal education was decentralized, which allowed

for the possibility to train and (re-) educate Ethnic Hungarians even in their own language (Ciurea 1956: 241).

At the level of personnel and elites, the first step of the Communists was to remove state personnel identified with the previous regime. This resulted in an enormous turnover in public employees in the initial years after the Communist came to power. Referring to the changes in the legal and judicial system Veniamin (1956: 301) argues that “It is probably in the realm of justice that the Soviet-inspired innovations introduced by the R.P.R. communist regime have had the most striking consequences.” Indeed, the break with the pre-Communist legal and judicial system was profound. Not only did the Communists change the formal legal structures and its underlying concept of justice, but they also replaced former magistrates with their own loyal personnel. Former judges have been “systematically eliminated” (Veniamin 1956: 303). Nevertheless, in Transylvania, there was also some room for continuity or revival of pre-communist legacies, at least in the initial years after Communist take-over of power. While the prewar bourgeois leadership used Romanian staff, the Romanian Communist Party “made extensive use of national minorities, especially the Magyar population” (Graham 1982: 42). However, this initial practice disappeared later on and all of these Hungarian Communists were loyal to the central power in Bucharest and its new communist ideology.

The break with the pre-Communist system concerned also other areas relevant for the functioning of the judiciary. In the area of education, the control over private schools (denominational and foreign schools) was transferred completely to the state (Ciurea 1956: 178). The educational personnel were purged. The hitherto existing curricula were replaced and teaching of religion in schools was abolished. New educational institutions, such as unified gymnasiums (junior high schools), schools for party cadres and schools for illiterates as well as other centers of communist propaganda were created (Ciurea 1956: 206). In short, there was reeducation through uniformization and homogenization.

Overall, one can conclude that there was a strong discontinuity of pre-Communist legacies in Romania in terms of structural, formal institutional and elite features. There are good reasons to believe that on the level of *formal rules* and *regional elites*, little (if anything) survived almost a century of centralization. It also applies to economic specifics. For instance, while after unification Habsburg regions had higher income than the Ottoman ones, the income per capita in 2007 was significantly *lower* in Habsburg than in Ottoman regions. This effect is only due to the presence of the capital (Bucharest) among the Ottoman jurisdictions; if one excludes it, no significant difference of the Habsburg or Ottoman legacy regions in terms of income per capita can be established (a situation entirely different from what was observed after the Romanian state was established).

The formal centralization persists in the post-Communist Romania, where it was to some extent enhanced by the external influences (e.g. EU conditionality) causing identical judicial and political reforms being implemented throughout the country (Mendelski 2012; Magen and Morlino 2008; Schimmelfennig and Sedelmeier 2005); see *Table 2*. Particularly, Romanian judiciary remains highly centralized. The current structure of the Romanian judicial system was established by the Romanian Constitution and the Law no.304/2004 regarding

the judicial organization. The structure of the Romanian court system operates on four tiers. There are 188 local trial courts (*judicatorii*), 42 county courts (*tribunals*) which serve as the *courts of appeal* of the lower level, 15 courts of appeal of the higher level and the High Court of Cassation and Justice. The hierarchical and centralized system is unitary in the sense that judges are subject to the same legislation, same rules of appointment and promotion, same salary levels, independent of the region. With the creation of the National Institute of Justice in Bucharest in 2004, judicial training has been centralized and magistrates receive the same quality of education. Legal education at universities follows the same curricula so that besides the quality of the professors we can expect no regional differences. There is also a unified appeal process (rather standard for most continental law jurisdictions), which is described in *Appendix I*.

Table 2: Change and continuity in Romania's history

Period	Elite continuity (politicians, bureaucrats, judiciary)	Formal/legal continuity	Structural continuity (education, literacy)	Informal continuity (values, norms, mentality)	Ethnic composi- tion
Ottoman period until 1829/Habsburg period until 1918	Yes	Yes	Yes	Yes	Yes
Inter-war period 1918-1939	Yes/No	No	Yes	Yes/No	Yes/No
Communist takeover 1945-1965	No	No	No	Yes/No	Yes/No
Communist period (Ceaușescu) 1965-1989	Yes	Yes	No	Yes/No	Yes/No
Post-communist period 1989-2007	Yes/No	No	No	Yes/No	Yes/No
Hypothesized overall persistence of pre- communist legacies	NO	NO	NO (in part)	YES (in part)	YES/NO (in part)

4.2. Persistence of legacies over time

Even in the environment of this strong centralization, there are reasons to hypothesize that the historical legacies could, to some extent, have persisted over time, due to the influence of *informal institutions* affecting the behavior of the litigants. Generally, the conjecture that demand for formal institutions (Herrmann-Pillath 1993; Helmke and Levitsky 2004; Leipold 2006; Levitsky and Murillo 2009; Gel'man 2011) and law (Pistor 1999, 2002; Oleinik 2005) can be driven by historical factors or collective memory (Savelsberg and King 2007) has been widespread in the literature. The differences in the rule of law in the past could affect the in-

formal institutions today, and as a result influence the demand for litigation. First, historical experience of the rule of law could affect the level of *trust into government and governmental establishments*. While we have argued that there is no unambiguous mapping from trust into demand for litigation, trust clearly affects the likelihood of using courts. For instrumental behavior trust matters because it shapes expectations on how governments, bureaucrats and courts behave; for expressive behavior trust matters because it perception the interpretation of the court decisions by the society and by the defendant and, hence, the need to file an appeal for identity reasons. Second, experience of the past could influence how *people perceive the fact that other people refuse to appeal or appeal in case they faced a criminal sentence*. For example, if appeal is considered a way to reaffirm one's identity as an honest person by most people in the society, refusing to appeal may be interpreted as evidence of guilt by others (even more than the court's decision). Third, *other informal practices* are likely to be influenced by the legacies as well.

The reasons for the survival of these informal institutions is the socialization via education and influence by family members, school, religious education and peer groups (see March and Olsen 1989; Di Maggio and Powell 1991; Berger and Luckmann 1966; Checkel 1999).²³ The socialization mechanisms imply that children imitate the behavior of their parents, educators and peers, but also that e.g. parents attempt to bring up their children according to cultural standards (Bisin and Verdier 2000, 2001). For example, Putman's (1993) logic suggests that the trust into governmental institutions is a by-product of high interpersonal trust. High interpersonal trust emerges very early in a person's life from what she learns in her family; it becomes basis for informal communities and associations created by people, and eventually affects the governance structures for the country (see critical discussion of this argument in Mishler and Rose 2001). This socialization mechanism can survive various institutional reforms, because it happens within families, where communication remains largely unaffected, and because parents have preferences in preserving the cultural traits.

Family, however, is not the only source of the generalized trust and persistence of legacies. In fact, the family socialization argument suggests that in order to survive informal institutions need to be transferred through particular people with families living in the same region over long period of time.²⁴ Since Romania has been subject to numerous migration waves during the first half of the 20th century, within-family socialization cannot be the only channel of survival of informal institutions. Thus, one has to ask which other sources of legacy survival could have played a role. Knack and Zack (2002) show that trust can be produced by educational system. Although the schooling system was subject to uniformization effort by the central government (in terms of content of education or curricula), one could suggest

²³ Even if the school is controlled by the government, norms acquired through primary socialization can survive in the family, at least in form of "crypto-morality", for a long period of time (see Greif and Tadelis 2010).

²⁴ The empirical evidence from the analysis of migrant families suggests that they often are able to preserve the cultural traits over several generations (Simpser 2013), though other papers show that the effect is much less persistent (Fidrmuc 2012).

that the teaching practices remained different in spite of this homogenization (as far as the central rules were implemented by local personnel).²⁵ Legacies can also be inherited through the reciprocal interaction within communities (Becker et al. 2011). This mechanism can be described as follows. Assume that at certain point of time a group of new migrants enters the community. If it is small enough, it will be socialized by the original population into certain norms and values. Hence, when at the later point another group of migrants enters (and part of the old population leaves), the migrants of the first wave will already fully embrace the existing norm, and will in turn contribute to the socialization of the migrants of the second wave according to it. Hence, if the number of migrants at every point of time is not large enough to entirely dilute the original population,²⁶ the norm will persist.²⁷

Furthermore, in spite of the Romanization policy pursued by the interwar nationalist and the post-World War II Communist governments, there are still parts of Romania with large ethnic minorities “inherited” from the Habsburg past. In six of 41 counties of modern Romania ethnic Hungarians account for more than 20% of the population, and in two their share exceeds 70%. Ethnic minorities could be possibly even more prone to preserving the informal institutions, as the latter could also contribute to their feeling of self-identity. This is an issue, which could be subjected to empirical investigation. We will explicitly check for the presence of this channel of legacy transmission in our analysis, therefore contributing not only to the understanding of the *functioning of legacies*, but also of a possible *mechanism of transmission of legacies*.

4.3. Pre-Habsburg and pre-Ottoman legacies

Our discussion should include an important caveat. So far, we argued that the possible differences in demand for litigation between the two parts of Romania could be driven by the persistence of informal institutions, which reflect the rule of law and judicial practices established during the Habsburg and the Ottoman rule. However, it is also possible that the differences between the two regions of Romania are not the outcome of policies of the 18-19th century, but are based on a much deeper cultural heterogeneity, which existed long before that (for a similar argument see Licht et al. 2007). In fact, modern territory of Romania was a place of encounter of various cultures and peoples for many centuries; the part labeled as “Habsburg” in this study belonged to the Hungarian Kingdom at least since the 9th century, with Walachia and Moldova being established as independent states in the 13th century. Before, the Byzantine influence could have played a substantial role in the region. These long-term variations could have affected *the level of trust, social norms and the relative importance of*

²⁵ This is different from the judiciary – the number of judges is much smaller and one can easily ensure that they all are trained within a small group of institutions and behave homogeneously.

²⁶ It would happen in case of mass resettlement, when the majority of original population has to leave due to changing borders; there have been several examples of it in the Central and Eastern European history of the last century, yet, to our knowledge, it has never happened in Romania.

²⁷ Ahren et al. (2013) argue, however, that peer effects have no influence on trust.

expressive vs. instrumental behavior and *the institutional setting* (or, more specifically, the success of institutional transplantation during different periods of time and the development of domestic law and legal practices), as well as the *economic development and the income level*. Unfortunately, tracing the historical legacies through such a long period of time empirically is extremely hard (particularly if our goal is to examine jurisprudence); but the possible role of these factors has to be acknowledged.

5. Data, empirical model and main hypotheses

In order to investigate the extent to which historical legacies affect the contemporary demand for litigation, we regress the number of cases submitted to appellate courts on historical and contemporary factors. Our study is based on a unique dataset of the Romanian court statistics extracted from reports on the prosecutor's office activity. Our dependent variable in the main regression is the *number of unresolved criminal cases* as of 2008 processed by the prosecutors on the level of tribunals, i.e. the first levels of appeal. This analysis is appropriate for us, as using the second level of appeals we would obtain an extremely small sample making econometric investigation impossible. More specifically, we take the number of cases per position of the prosecutors at the tribunal level, i.e. number of prosecutors normatively assigned to the tribunal (some of these positions may be empty, as discussed in what follows). Thus, we are able to account for the size of the counties (larger counties definitively have more cases) and the differences in judicial capacity (although, as mentioned, the training and the qualification of judges and prosecutors is rather uniform, some counties may simply have more staff than others) to find out the actual demand for the appellate jurisprudence. As a caveat, we have to acknowledge that some of the cases processed by prosecutors may not be an outcome of the appeals but rather transferred for criminal investigation from lower-level prosecution offices to higher-level offices. However, for 2012 we have obtained data on both criminal cases considered by judges in tribunals and number of cases processed by prosecutors at the level of tribunals. One can show that both variables are highly correlated (correlation coefficient of 86%), and, as discussed below, cases arriving at the level of tribunals are mostly an outcome of appeal by accused. Thus, we can rely on our data for the purposes of research question of this study.

Obviously, the number of cases at the level of the courts of appeal is determined by two factors: the number of appeals submitted after the trial courts' decisions and the judicial quality and resources of the tribunals. One could conceptualize them as 'supply' and 'demand' sides of the appeal jurisprudence (Murrell 2001).²⁸ As mentioned, in the Romanian case is that the

²⁸ This supply side reflects structural-economic approaches that stress the beneficial role of economic development, state capacity, and human capital in the creation of democracy and rule of law (e.g. Fukuyama 2004; Besley and Persson 2009; Lipset 1959). It equally stands for the international donors' dominating

supply-side of the judicial performance (judicial capacity) is likely to be highly homogenous due to the century-long process of centralization described above, i.e. the formal uniformization: centralized nature of judiciary makes, for example, differences in training or resources available for judges and prosecutors rather low. It is particularly the case for the tribunals and other appeal courts: the central government puts more effort in ensuring the quality of the judges in these courts (rather than in trial courts), so one can expect greater homogeneity of supply-side factors, which will make our investigation possible. This is a big advantage for our study. We will, however, consider several proxies of judicial capacity, which could still make tribunals differ from each other, and control for these characteristics.

Since we are considering criminal cases, we have to acknowledge a further confounding factor, which could be a problem for our analysis. In the Romanian legal system, decisions of the trial courts can be appealed by both defendant and prosecutors (differently from the US, but similarly to most European continental law countries). The incentives of the prosecutors may be very different from those of the defendant, and our theory referred primarily to the latter. Still, there are reasons to argue that this problem is less important for us. First, the trial courts' decision is in most cases in the favor of the prosecutor (the share of acquittals in Romania is, according to the data of the Supreme Council of Magistracy, close to 1-2%), what is not unusual for the criminal jurisprudence of many post-Socialist countries. Thus, the prosecutors have low incentives to appeal anyway. Second, we can isolate effect of the defendant's behavior on appeals, using the following logic. Assume that there is a certain inflow of cases in the judicial system (generated, e.g. by the activity of the police). The behavior of courts and judges is homogenous across Romania, but so is the behavior of prosecutors. Hence, for a given number of trial court cases, the actions of prosecutors should generate roughly identical appeal rates in different parts of Romania. Therefore, if we observe variations in the number of appeals *ceteris paribus* the number of cases in the trial courts and argue that the behavior of the prosecutors is the same in various counties in Romania, then the variation in the number of appeals should be driven by the behavior of the defendant – which is precisely the dimension we are interested in. It implies, however, that we have to run our regressions controlling for the inflow of cases in the trial courts – we will discuss this issue in what follows.

The behavior of the defendant, in turn, is likely to be influenced by the *past historical legacies* and the *current development* (contextual factors). The resulting differences in the judicial performance therefore represent the *revealed demand* for appellate litigation. It may be different from the pure “preferences for” and “perception of” the judicial system determined by legacies, as it also takes demand-side *constraints* individuals face into account (e.g. resources they have to pursue litigation); this is, however, what we intend to capture using the control variables. Furthermore, while informal norms could affect both the behavior of judges or

approach to judicial reform (e.g. World Bank, EU) which emphasizes the importance of judicial capacity and institution building (Anderson and Gray 2007; Open Society Institute 2002; see Kleinfeld Belton 2005; Hammergren 2007).

prosecutors and the procedures in courts *and* the behavior of litigants, since the judicial system in Romania is highly centralized in terms of the training and appointment of personnel, these norms are more likely to explain variation in the behavior of the litigants (and thus, the demand for litigation) than that of judges. *Figure 2* summarizes the logic of our investigation.

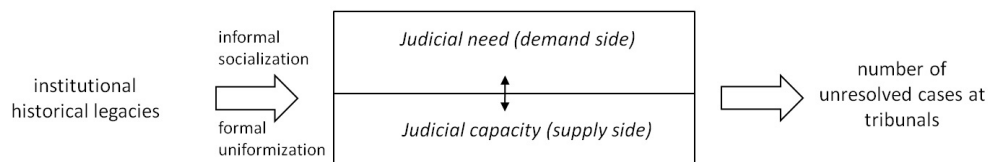


Figure 2: Judicial performance at the level of tribunals

Our sample includes a cross-section of 41 Romanian counties,²⁹ which is the lowest level for which statistical data for Romania is available, and also the level courts of appeal operate at. There are two key explanatory variables in our analysis. One is the *Habsburg dummy*, equal to one for all counties originally belonging to the Austria-Hungary (using the borders as they have been determined at the onset of World War I) and zero otherwise. We attribute 17 countries to the Habsburg region, while the rest has been primarily under Ottoman (and for shorter periods Russian) influence.³⁰ Another variable is the *income per capita* in the region (measured by net nominal monthly earnings), reflecting the level of economic development. In all regressions, we control for the inflow of cases into the trial courts. It is done using two approaches: first, we control for the crime rates measured by the number of *cases investigated* by law enforcement per capita. In Romania, as *Appendix E* shows, the number of investigations and of actual cases submitted to courts is very close, therefore this variable is a good proxy for the inflow of criminal cases. Second, we control for the actual number of the *criminal cases in trial courts*.³¹

²⁹ We drop one county, Ilfov, due to the non-availability of information.

³⁰ Even the intra-country studies of legacies face two difficulties: first, which historical border exactly has to be used (border between Habsburg and Ottoman zones shifted over time), and second, how to deal with counties divided between Ottoman and Habsburg (since we do not have macroeconomic data for units smaller than county, we also cannot use them in our analysis). Until mid-19th century the territories of Moldavia and Walachia (what we consider the “Ottoman legacy” zone) have partly fallen under Habsburg or Russian occupation for brief periods of time; however, no permanent long-lasting presence was established and therefore the impact of the Habsburg legacies ought to be much weaker than in Transylvania or even Bukovina (which was occupied in 1774). As for the borders of counties, we have simply attributed the counties, which have *mostly belonged* to Bukovina or Transylvania in terms of territory to the Habsburg zone.

³¹ Here, we use two variations of this variable: total number of criminal cases and average number of criminal cases per position of the prosecutor (it allows us to take into account the differences in size between counties).

Reverse causality is absent for the Habsburg dummy (which reflects a century-old variation across Romanian counties); it is also improbable for the monthly earnings (if one accepts the claim that the variation of judicial capacity among counties is very low, it is unlikely that larger number of cases admitted to the court of appeal should increase income per capita). Nevertheless, for the income per capita it is necessary to account for the omitted variable bias. For this purpose, we add a set of further control variables to our regressions (for details on the variables used see *Appendix A*). We look at the level of the overall development and economic situation in the region, measured by the regional population size and the level of unemployment. Furthermore, we control for the share of urban population, the share of “blue collars” (workers) in the region’s workforce, as well as the share of different age groups (possibly representing both standard differences over cohorts, but also effects of the transition from Communist rule). We also control for the number of students in the post-secondary education, and for the dropout rate in the primary and secondary education. Both variables could be perceived as (rather crude) measures of quality of education in Romanian regions. The advantage of the first measure is that in Romania primary and secondary schooling still cover the main part of the population (if not the whole population). However, it is certainly possible that some regions produce education services for other regions (i.e. students leave after completing their studies); yet high number of students still indicates higher level of human capital accumulated in the region (given the fact that the very educational services require professional staff). As for the abandon rate, this variable is more difficult to interpret. On the one hand, it might reflect the low quality of schooling. On the other hand, since the abandon rates are very low (less than 4%) and given the period of our investigation, this indicator might capture another feature of the Romanian society in 2008: large emigration rates. Romania entered the European Union in 2007, and it resulted in an outflow of economically active population into other countries of the EU (Roman and Voicu 2010). Dropout rates might reflect the fact that students leave the country with their parents. In what follows, we will look at this interpretation more closely, as it is likely to be highly consistent with the empirical outcomes of our investigation.

In addition to the main controls, we also run a set of regressions controlling for the total number of positions of judges in the tribunal; total number of the actually occupied positions of judges; and total number of the actually occupied positions of the prosecutors (there are some counties where the assigned number of positions was not filled), to further check for the supply side judicial capacity (while the training of judges and prosecutors is homogeneous, there may be counties where simply more judges and prosecutors are available, what may affect the results). We also run a regression where we control for the total number of positions of prosecutors, though it may be excessive, because we already divide the dependent variable by the number of positions of prosecutors; it may be, however, that due to synergies in the prosecution staff the judicial capacity may be larger if the number of prosecutors is larger even in terms of how well each prosecutor is capable of handling his caseload. We also control for a proxy reported by the Supreme Council of Magistracy (the highest level body charged with ensuring the independence of the courts) on the efficiency of courts and

prosecutor's offices in Romania, measuring the speed the cases are processed with.³² This particular proxy is to some extent problematic since it may suffer from reverse causality in our investigation, but we still use it as a robustness check.³³

Our investigation will be guided by the following main hypotheses. The first two concern the very fact of the persistence of legacies and the possible channels of their persistence (as much as they could be captured by the available data):

H1: Institutional historical legacies (specifically, pre-Communist Habsburg and Ottoman legacies) affect the number of appeals in criminal cases.

H2: Mechanisms of transmission of legacies can be associated with persistence of ethnic minorities.

Hypothesis H1 is similar to what has been tested by the previous literature we have discussed before, which also looked at the impact of historical legacies on the current institutional characteristics (for financial development or trust and other institutions); we, however, add a new area of institutional structure (judicial system), complementing the previous studies. Hypothesis H2 has never been tested before. The second set of hypotheses describes the actual expected effect of the Habsburg and Ottoman legacies. As suggested, we have conflicting predictions as to which type of legacies should lead to larger or to smaller demand for appellate litigation, hence, we have to formulate two conflicting hypotheses:

H3.1: Demand for appellate litigation is higher in the Habsburg regions than in the Ottoman regions versus

H3.2: Demand for appellate litigation is higher in the Ottoman regions than in the Habsburg regions.

Our predictions were, however, unambiguous for the way income should affect demand for litigation in two historical zones, hence the last hypothesis can be formulated as:

H4: One should observe a greater change of demand for litigation with the increase of income in the Habsburg jurisdictions than in the Ottoman jurisdictions.

³² The efficiency of courts is available only for all cases, and not merely for criminal cases.

³³ Since we are estimating our regressions for a very small sample of 41 counties, where the courts of appeal operate, we have to check for the normal distribution of residuals: we do it by calculating the Jarque-Bera test and excluding outliers with large residuals until we obtain normal distribution of residuals (for other applications of this approach in region-level data regressions see Feld et al. 2008). However, this procedure does yield very few changes in our findings.

6. Results

Main results: *Table 3* reports the main results of our study. If we merely include the Habsburg dummy in the set of covariates for the full sample of counties, this dummy turns out to be insignificant. If we add an interaction term between income and the Habsburg dummy, both Habsburg dummy and the interaction term are significant at 10% level (what is acceptable given our very small sample). The result remains almost robust throughout various compositions of controls (*Table 3*), as well as if we control for the number of cases in trial courts instead of crime rates (*Appendix C, Table C5*). In order to properly analyze the effect of the Habsburg dummy on the demand for litigation for various levels of income in the presence of an interaction term, we compute marginal effects of the Habsburg legacies for various levels of income and estimate their significance (*Appendix C, Table C1*).

Table 3: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position

	(1) OLS	(2) OLS	(3) OLS	(4) OLS	(5) OLS	(6) OLS	(7) OLS
Population	-0.000 (0.000)	-0.000* (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Earnings	0.113 (0.083)	0.093 (0.095)	0.012 (0.112)	0.003 (0.105)	-0.017 (0.113)	0.040 (0.106)	-0.001 (0.109)
Unemployment	-4.912 (4.846)	-6.920 (5.421)	-6.187 (4.940)	-6.238 (4.553)	-6.482 (5.076)	-4.932 (4.803)	-5.765 (4.145)
Education (post-secondary)	0.031 (0.023)	0.035 (0.022)	0.033 (0.022)		0.032 (0.023)	0.031 (0.023)	0.032 (0.019)
Education (abandon rate)				-1.448 (11.433)			
Crime rate	-0.048* (0.024)	-0.047* (0.026)	-0.046* (0.026)	-0.035 (0.025)	-0.048* (0.025)	-0.039 (0.026)	-0.038 (0.028)
Urbanization					0.556 (0.704)		
Blue collars						-1.782 (1.203)	
Age > 65 years							-5.417 (4.062)
Age 40-64 years							-5.486 (4.329)
Habsburg		-16.977 (16.182)	-206.237* (112.381)	-229.536** (108.255)	-209.918* (116.646)	-185.150* (104.547)	-259.001** (119.781)
Habsburg * earnings			0.204* (0.118)	0.236** (0.116)	0.201 (0.124)	0.186 (0.112)	0.257** (0.120)
Constant	77.133 (68.251)	114.839 (87.399)	177.316* (98.924)	161.123* (91.042)	188.527* (99.112)	247.127* (128.724)	419.311** (160.474)
Observations	41	41	41	41	41	41	41
R ²	0.219	0.246	0.286	0.209	0.297	0.325	0.352
J.-B. test	8.638**	5.316*	3.765	7.570**	3.806	3.218	2.289

(Table 3 continued)

	(8) OLS	(9) OLS	(10) OLS	(11) OLS	(12) OLS	(13) OLS	(14) OLS
Population	-0.000* (0.000)	-0.000** (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Earnings	-0.053 (0.137)	-0.029 (0.123)	-0.035 (0.150)	-0.024 (0.142)	0.018 (0.115)	0.013 (0.113)	-0.105 (0.385)
Unemployment	-6.227 (4.965)	-6.047 (4.796)	-6.305 (5.065)	-6.283 (5.069)	-5.720 (5.196)	-6.176 (5.041)	-4.385 (4.672)
Education (post-secondary)	0.035 (0.022)	0.035* (0.020)	0.033 (0.023)	0.033 (0.023)	0.033 (0.023)	0.034 (0.023)	
Education (abandon rate)							-63.043 (211.695)
Crime rate	-0.050* (0.026)	-0.061** (0.027)	-0.050* (0.028)	-0.049* (0.028)	-0.045* (0.026)	-0.046* (0.026)	-0.050* (0.025)
Number of prosecutors	2.732 (1.773)						
Number of actually assigned prosecutors		3.326** (1.325)					
Number of judges			0.416 (0.642)				
Number of actually assigned judges				0.339 (0.573)			
Efficiency of courts					-48.06 (99.283)		
Efficiency of prosecutors						10.469 (59.888)	
Habsburg	-265.749* (137.425)	-241.850* (119.511)	-256.241 (160.385)	-242.027 (148.898)	-219.884* (115.562)	-208.019* (115.753)	-452.280 (430.363)
Habsburg * earnings	0.270* (0.145)	0.246* (0.126)	0.258 (0.170)	0.243 (0.158)	0.220* (0.123)	0.207 (0.122)	0.565 (0.446)
Habsburg * Education (abandon rate)							92.837 (226.086)
Education (abandon rate) * Earnings							0.084 (0.214)
Education (abandon rate) * Earnings * Habsburg							-0.142 (0.232)
Constant	237.066* (125.195)	231.876** (113.509)	229.586 (149.793)	216.938 (141.089)	208.195* (110.495)	168.268 (104.150)	243.882 (382.700)
Observations	41	41	41	41	41	41	41
R2	0.318	0.359	0.294	0.292	0.290	0.286	0.289
J.-B. test	2.854	2.675	3.704	3.733	3.563	3.740	6.713**

Note: robust standard errors in parentheses. *** significant at 1% level; ** 5% level; * 10% level. J-B test refers to Jarque-Bera test for the normal distribution of residuals; H0 is that residuals are normally distributed. Outliers are Vrancea in regression (1), (2); Vrancea, Iasi and Constanta in regression (4), Vrancea and Iasi in regression (14). After exclusion of outliers all effects related to Habsburg dummy keep their sign and significance; in regression (14) Habsburg dummy becomes significant and negative; interaction term between Habsburg dummy and earnings significant and positive.

One can see that in extremely poor counties the Habsburg dummy effect is negative and significant. It is particularly true (for most specifications) for counties with earnings below 850 lei: these are, specifically, Bihor, Calarasi, Covasna, Harghita, Maramures, Teleorman and Vaslui. Three of these counties belong to the Habsburg zone, and four to the Ottoman zone; hence, there is no reason to say that our results are driven just by a small set of particular counties. Since the number of pending cases per prosecutor's position is not very large, reaching at most 200 cases, the effect is not only statistically significant (given the size of our sample), but also quantitatively substantial. It means that for poor counties we actually observe that Ottoman regions have higher demand for litigation than Habsburg regions.³⁴ In some regressions we also find significant differences in the effects for very rich counties, where, on the contrary, Ottoman regions underperform the Habsburg ones, but this effect is driven almost entirely by Bucharest (the county with the highest income per capita) and is much less robust.

Hence, while we were able to confirm the hypotheses *H3.2*; our results are inconsistent with the hypothesis *H3.1*. The results are also consistent with *H4*; we also test this hypothesis using an alternative procedure. We split the sample into two groups of Ottoman and Habsburg counties, and estimate the regressions separately for each of them. The results are reported in *Appendix C* (*Tables C2* and *C3*). In the Habsburg regions we find that the earnings have a strong, significant, and positive effect on the number of cases. In the Ottoman regions, on the contrary, earnings are insignificant. Thus, in the Ottoman regions the demand for litigation does not react on the growth of earnings, while it is influenced by earnings (in the way consistent with the theory) in the Habsburg regions. Plotting the unconditional correlation between the income per capita and the number of cases we come to the same conclusions (see *Figure 3*).

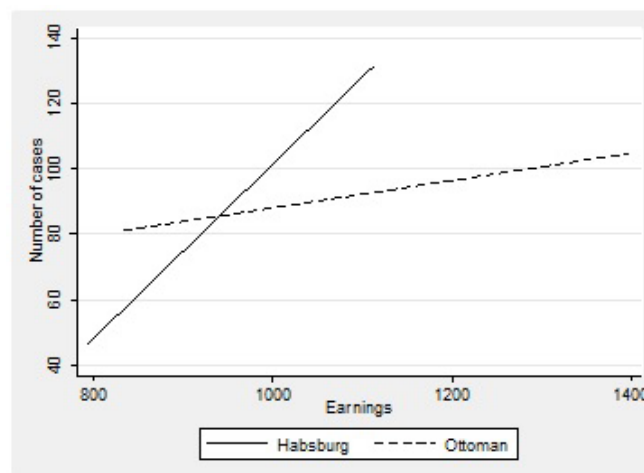


Figure 3: Unconditional correlation between the income per capita and the number of cases (per position of the prosecutor), linear fit, Habsburg and Ottoman regions

³⁴ Even if the interaction term as such is insignificant in the main regressions, the marginal effect of the Habsburg dummy for poor counties is always significant and negative.

Extensions: In the next step, we interact the Habsburg dummy not only with the earnings per capita, but also with the dropout rates, and estimate a regression with triple interaction effects. If we plot specific levels of significance of the Habsburg dummy for different levels of income and of dropout rates (*Appendix C, Figure C1*), the results look as follows. For very small dropout rates (e.g. 1%) we indeed observe the effects discussed and reported above, with significant and positive Habsburg impact for rich regions. If the dropout rates are high, the effects are not significant at all. Thus, one can conclude that the legacies matter *only in counties with small dropout rates*. This is an interesting observation, which is consistent with one of the interpretations for the dropout rates we have used so far – that is, as measure of emigration from individual counties caused by the European integration. Indeed, several factors, which should have generated differences between Habsburg and Ottoman regions in line with hypotheses *H3.2* and *H4*, which have been consistent with the previously reported results, in terms of the demand for litigation, seem to be absent or much weaker in counties where larger fraction of the population emigrates or considers emigration. First, appeals done to use the random chance of success should be less frequent, if the individual plans to leave the country and thus does not plan for long-term litigation (particularly, in cases punished by fines, where it is possible to “pay and go”). Second, concerns about disclosing one’s income to the predatory state should be also lower, if there are plans to leave the country. Third, while expressive behavior based on confirming one’s identity to oneself is not affected by migration decisions, if the expressive behavior attempts to confirm one’s identity to others, it may be less important for those who plan to leave the country.

This effect of migration creates an additional problem for the interpretation of our results, which we need to carefully discuss: the role of selection bias. Specifically, the observed correlation between the Habsburg or Ottoman legacies and number of cases processed by prosecutors in the Tribunals may be driven by an omitted variable correlated with both variables discussed: differences in migration rates (due to higher migration rate, the composition of potential litigants in some counties changes as opposed to others, resulting in change in the demand for appeals). In order to deal with this problem, we have to show whether Habsburg or Ottoman regions differ in terms of migration rates. For this purpose, we will first use at the official migration statistics of Romania, reporting the number of individual shifting the permanent residence from Romania to other countries. If we compute the average number of migrants from Habsburg and from Ottoman counties, and perform the t-test for the mean comparison, we obtain an insignificant result (p-value of 0.5516), suggesting that on average migration from Habsburg and from Ottoman counties does not differ. We also replicate our regressions controlling for the number of emigrants (*Appendix C, Table C6*), and the results are confirmed.

The official emigration data, however, may be imperfect while capturing the emigration from Romania; a large number of migrants may officially move only temporary and thus will not be counted by the migration statistics. In fact, if we look at the number of migrant reported by the official authorities, it appears to be very small. Thus, we also use the data published in Open Society Institute (2006) and based on a large survey, reporting the dynamics

of temporary migration from Romania. The report represents the migration dynamics not at county level, but at the level of the so-called “historical regions”, which can be roughly attributed to either Ottoman or Habsburg zones. After we do it, however, we see that the emigration rate for both zones is roughly the same (unfortunately, we cannot perform a formal test here due to the very small size of the sample), see *Appendix D*. Thus, again, selection bias does not seem to drive our results.

Hungarian minorities: So far we were able to establish an effect, but not to show the precise channel, which influences the existence of it. We look at a specific channel of influence of legacies in Romania: The identified “Habsburg legacies” may be also associated with significant Hungarian minorities residing in several Romanian counties. We use the data from the Romanian Census of 2002, which report the share of ethnic Hungarians (partly forming the majority in some of the counties – all of them belong to the Habsburg group). The results are reported in *Appendix C (Table C4)*. First, we replicate our key findings replacing “Habsburg dummy” by “share of Hungarians”, and find no effect for the interaction term. Second, we also re-estimate the key results including the Habsburg dummy and controlling for Hungarian dummy. Now, “Habsburg” results remain unchanged; share of Hungarian minorities has no effect. Finally, we form a variable equal to the share of non-Hungarian population in the former Habsburg regions and interact this variable and the share of Hungarian population separately with earnings. The effect seems to come only from the regions where Hungarian minority is small; so, the presence of the Hungarian minority as such does not cause the effect in question. If we control for other minorities indicated in the Census (which, however, rarely provide more than several percent of the population of the county), our results remain robust. To conclude, Habsburg effect does not seem to be driven by the persistence of particular minorities.

7. Discussion

The results we obtained fit very well a more general phenomenon, which we can refer to as the excessive demand for *appellate* litigation (the “culture of appeals”) in countries with a weak judicial quality. There seems to be substantial evidence that people in countries, which lack an impartial and capable judiciary, are more likely to appeal than in countries with established tradition of the rule of law. According to Council of Europe data on dismissal of cases (in all areas of law), the percentage of decisions subject to appeal are on average higher in South Eastern European countries (48%) and post-Soviet countries (41%) as compared to fewer appeals in Western Europe (30%) or the more advanced post-communist countries from Central and Eastern Europe (27%).³⁵

³⁵ Calculations are based on data from Council of Europe 2002, 2010, 2012.

To investigate this issue further, we carried out a set of interviews with international representatives (Council of Europe, European Court of Human Rights) and national ones (in Romania). All interviews were conducted between 2010 and 2013. Almost all interviews we conducted, generally, confirm the existence of a “culture of appeals”: A judge from the Constitutional Court explained the appeal culture with the “mentality of Romanians to contest judicial verdicts”.³⁶ “Citizens hope to achieve a more favourable verdict at a higher court level, irrespective if they are right or not”.³⁷ Judges also perceive the number of appeals to be very large. Citizens tend to appeal judicial decisions up to the highest court and when failing there, turn even to the Ministry of Justice (which is senseless) or to the ECHR.³⁸ Most interview partners argue that the main reasons for high appeal rates are to be found in the poor quality of the judicial system, which leads to a lack of citizens’ trust in the system and more contestation of judgements. A lack of impartiality, high perceived corruption, low costs for trials and launching appeals contribute to the high demand for appellate litigation.³⁹ A lack of systemic impartiality is closely linked to the incoherent and constantly changing legislation.⁴⁰ Furthermore, politicians and the media with their permanent attacks and “exaggerated” critique of the Romanian judiciary decrease the trust⁴¹ of citizens into justice which in turn creates a “culture to contest judicial decisions” (this effect should be present in the Ottoman and in the Habsburg counties alike though).⁴² This evidence seems to be consistent with the interpretation of appeals as attempts to use the perceived random nature of court decisions. Intentional delay, corruption and politicization also play an important role. Here we could speak of a misuse or instrumentalization of the appeal procedure.⁴³ Such common practices and the low condemnation rates in high-level corruption cases do not necessarily improve the citizens’ trust into the judicial system.⁴⁴

³⁶ Interview on 18 February 2013, Strassbourg.

³⁷ Personal communication with Laura Stefan, legal expert in the NGO expertforum.ro and former Director in the Romanian Ministry of Justice 21 September 2012.

³⁸ Interview with Gabriela Baltag, judge at the Neamt County Court, Piatra Neamt, 4 November 2010.

³⁹ Interviews with diverse Romanian judges between 2010 and 2013 and personal communication with Laura Stefan, 21.9.2012.

⁴⁰ Interview with Gabriela Baltag, 4 November 2010 and with Corneliu Barsan, Romanian Judge at the ECHR, Strasbourg, 1 September 2011. Legal instability and incoherence impact negatively on the functioning of the judicial system in Serbia (authors’ interview with Dragoljub Popovic, Serbia’s judge at the ECHR, Strasbourg, 6 March 2012) and Moldova (authors’ interview with Raisa Botezatu, Judge at the Supreme Court of Justice, Chisinau, 3 May 2011).

⁴¹ The citizens’ trust levels into justice are much lower in SEE than in CEE, and have experienced a negative trend in the last decade. See *Appendix F*.

⁴² Interview with Iulian Mitrofan and Gabriela Baltag, judges at the Neamt County Court, Piatra Neamt, 4 November 2010.

⁴³ A recent example is the case of Dan Voiculescu a Romanian politician who resigned from his post as a senator due to corruption allegations in order to be judged as a normal citizen, starting at the first instance court level and by so doing delaying the trial process with the aim to reach the statute of limitations. Interview with Laura Stefan, Freiburg, 2. September 2012.

⁴⁴ Interview with a Council of Europe representative, Strasbourg, 6 March 2012.

We should note that the “culture of appeals” have been observed in other countries of the region as well. A popular saying in Moldova (a country culturally and historically extremely close to contemporary Romania) is: “I will go to the Pope in Rome, if necessary” and can be translated as “I will seek justice up to the ECHR”.⁴⁵ “Many litigants understand that they have small chances of success. However, the ‘bad’ jurisprudence inspires them”. In general, the „quality of Moldovan judgements is bad. Therefore, the appeals are often used to correct the mistakes or to improve the reasoning of the lower courts.”⁴⁶ Reasons for high rates of appeal are claimed to be high corruption, a lack of uniform practice, low professionalism of judges and lawyers as well as a poor understanding of the legislation by the lawyers/citizens.⁴⁷ Furthermore, professionalism and integrity of the people matters. There is frequent “abuse of lawyers, which often advise their clients in a manner incompatible to judicial practises”. There is also a certain “tolerance of judges to and lack of deterrent measures against deliberate protraction of court proceedings” which produces „many appeals.”⁴⁸ Finally, even though certain legal restrictions are present to inhibit appeals, it is relatively easy and inexpensive to lodge an appeal in practice. Judges generally tolerate appeals based on inadequate evidence in order to avoid accusations of restricting access to justice.⁴⁹ In Russia, in the same way, although the quality of courts is very bad and the probability of success is low, it is typical for lawsuits to end up in a sequence of appeals up to the highest possible level. Russian, Romanian, Turkish and Ukrainian citizens are known to be among the most active litigants at the European Court of Human Rights (ECHR).⁵⁰ This outcome is under no conditions a recent phenomenon. In fact, active use of appeals, in spite of attempts of the government to discourage them, is claimed to have been observed since the eighteenth century (Muravyeva 2013).

To conclude, our findings may relate to a phenomenon existing also beyond the Romanian borders. We have, however, to acknowledge that our specific explanations (e.g. frequent change of Phanariot rulers) are specific for Romania and were absent in other countries with weak rule of law we mentioned. In order to find out what served as substitutes of these

⁴⁵ Interview with Leonid Antohi, project manager at the Legal and Human Rights Capacity Building Department, Council of Europe, Strasbourg 18 July 2011 and personal communication on 21 September 2012.

⁴⁶ Personal communication with Vladislav Gribincea, Lawyer and Executive Director of the Legal Resources Centre, 23.9.2012.

⁴⁷ Authors interview with Leonid Antohi, project manager at the Legal and Human Rights Capacity Building Department, Council of Europe, Strasbourg 18 July 2011 and personal communication on 21 September 2012.

⁴⁸ Authors personal communication with Vladislav Gribincea, Lawyer and Executive Director of the Legal Resources Centre, 23 September 2012.

⁴⁹ Authors personal communication with Corneliu Gurin, legal expert at ADEPT (Association for Participatory Democracy) and vice-president of the Democratic Action Party, 22 September 2012.

⁵⁰ Clearly, it is partly an outcome of very poor performances of the domestic judicial system (see ECHR 2009). However, it is also the case that the implementation of the ECHR decisions is in many cases questionable and excessively delayed (especially in the non-democratic Russia), so, the instrumental logic of appeals to the ECHR may be contested.

practices in other countries, a more detailed analysis of their legal history is required, which, however, goes beyond the framework of this paper.

8. Conclusion

It remains to summarize the main findings of the paper. We have shown that Habsburg and Ottoman legacies do have a substantial impact on the demand for litigation in modern Romania. The effect we find is, however, non-trivial. Although the previous research has shown that the Habsburg legacy is associated with higher trust in courts than the Ottoman one, we find that in poor counties Ottoman legacy is associated with larger number of appeals than in rich counties. At the same time, in Habsburg counties the number of appeals increases with income, while in Ottoman counties it exhibits very low change. We have also investigated one possible transmission mechanism of historical legacies: the role of ethnic minorities – and find that the Habsburg legacies are present even in regions with smaller Hungarian minorities. Thus, it makes other channels of transmission of legacies, like the interaction within local communities, more plausible; further investigation, however, is required in this respect.

The findings of the paper contribute to several fields of study. First, our work relates to the debate on the *persistence of historical legacies in general*. Here, we make two contributions. First, our main argument is that the impact of these historical factors might be conditional on contemporaneous characteristics of the regions and be entirely different (in fact, the opposite), for, for example, poor and rich jurisdictions. It could shed further light on partly extremely contradictory conclusions made in the literature regarding the effect of legacies; the same effects have been used to explain highly contradictory behavior. While these discrepancies are typically explained by the poor operationalization of legacies, we argue that they can be driven by the fact that the same legacies *do* have different consequences, depending on the context in which they are embedded. Second, we show that the legacies can persist even in spite of lack of continuity of population; in fact, we show that in parts of Romania where this migration was weaker (larger Hungarian population persisted), there is no evidence of stronger persistence of legacies. This result speaks to a number of recent papers looking at the legacies of Jewish settlements in Eastern Europe; while in this case there is also no continuity in terms of population, Grosfeld et al. (2013) show that there is a persistent effect of legacies (though driven by a very different mechanism than that discussed in this paper).

Second, we contribute to the growing literature on the *pre-Communist legacies in the Central and Eastern Europe* and, more specifically, to the Ottoman and Habsburg legacies, summarized in the introduction. Our contribution is in this respect twofold. First, we confirm the result already established in numerous other studies (summarized in the introduction to this paper) and show that pre-Communist legacies still have an influence on the social development of these countries, but for a previously unexplored area (demand for litigation). Second, our study suggests that the historical legacies under investigation require very

careful identification. In the Romanian case, we indeed see that the Ottoman legacy matters – however, the Ottoman legacy in the jurisprudence of the Romanian principalities seems to be very different from the Ottoman legacy, as it was observed in parts of the Balkans under direct rule of the Empire. While some features are similar (weak rule of law, high corruption and arbitrariness of jurisprudence), there is a major difference – appeals, which did not exist or were strongly discouraged in the Ottoman jurisprudence (Kuran and Lustig 2012), were highly encouraged in Romanian vassal states. Also, specific institutions of the Islamic law, which also have major effect on social development (Kuran 2011) were absent in the Phanariot states (where both the population and the appointed rulers were Orthodox Christians; their legal system did not include any elements of Islamic law). Thus, Ottoman legacies (e.g. indirect rule through Phanariots in Romania) are not equal to Ottoman legacies (e.g. direct rule in most other Ottoman territories). In the same way, Russian, Habsburg or Prussian legacies could be hypothetically different depending upon the particular mode of governance these empires used in different territories. While our study looks only at one case (Romania), it suggests that it is necessary not only to compare legacies of different empires, but of different rules *within* these empires.

Third, our results may have certain policy implications for the discussion of the *judicial reform in Central and Eastern Europe* (and, particularly, Romania), which belongs to the key challenges these countries face. As mentioned in the introduction, high number of appeals may have both positive and negative implications for the social and economic development. As a caveat, it is impossible to use the standards of behavior, which evolved in some societies, to evaluate the behavior in other ones. The high number of appeals or engagement in corruption networks in the Ottoman principalities should not be interpreted as evidence of sub-optimal behavior; on the contrary, they can be seen as evidence of optimal adjustment to the particular environment of a predatory state.⁵¹ However, these patterns seem to persist in the modern Romania with highly centralized and uniform judiciary. Despite certain deficiencies, the appeal process, while abused in the past (ABA/CEELI 2002:15), works relatively well in contemporary Romania: appeals of criminal judgments are resolved within a reasonable time period and at reasonable costs.⁵² Under these conditions, propensity of population to frequently appeal even in cases with very low chances of success may result in the growing burden on the judiciary, which in turn could make it less efficient. This could lead to a vicious circle: inefficient judiciary leads to high randomness in decisions, and it again is one of the factors leading to growing number of appeals. This problem received less attention in the literature, which typically concentrates on improving the access to judiciary (e.g. Chemin 2009; Titiriga 2013); we show that low trust in the judicial system can lead to excessive use of judicial instruments (given the current institutional environment), not to the

⁵¹ And predatory behavior of officials, again, can be seen as optimal adjustment to frequent re-appointment policy of the sultans.

⁵² See <http://www.globalintegrity.org/report/Romania/2010/scorecard>, accessed September 15, 2013.

under-utilization of those.⁵³ The policy responses to these challenges constitute an important further field of research.

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⁵³ For a related discussion see Hendley (2013).

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Appendix A: Description of variables

Variable	Description	Period	Source
Age > 65 years	Share of population of 65 years and older of age in the population, %	2007	Romanian National Institute of Statistics
Age 40-64 years	Share of population of 40-64 years of age in the population, %	2007	Romanian National Institute of Statistics
Blue collars	Share of workers in the regional population, %	2007	Romanian National Institute of Statistics
Crime rate	Criminal offenses investigated by police per 100,000 people	2007	Romanian National Institute of Statistics
Education (abandon rate)	Abandon rate in pre-university education, %	2006/2007	Romanian National Institute of Statistics
Education (post-secondary)	Number of students enrolled in post-high school education programs, people	2007/2008	Romanian National Institute of Statistics
Efficiency of prosecutors	Number of resolved cases / Total number of cases assigned to the prosecution (only criminal cases included)	2008	Superior Council of Magistracy
Efficiency of courts	Number of resolved cases / Total number of cases (excluding suspended cases) in courts (all cases)	2008	Superior Council of Magistracy
Emigration	Number of emigrants shifting their permanent residence abroad, people	2007	Romanian National Institute of Statistics
Germans	Share of ethnic Germans in the population, from 0 to 1	2002	Census
Habsburg dummy	1 if the region belonged to the Habsburg Empire, 0 otherwise	NA	Own compilation
Hungarians	Share of ethnic Hungarians in the population, from 0 to 1	2002	Census
Income per capita	Average net monthly earnings, lei	2007	Romanian National Institute of Statistics
Number of cases in the Tribunal	Number of cases in the country Tribunals processed by prosecutors, per a position of prosecutor	2008	Superior Council of Magistracy
Number of cases in trial courts, total	Sum of numbers of criminal cases investigated in all trial courts in the county	2008	Superior Council of Magistracy
Number of cases in trial courts, per position of the prosecutor	Average number of criminal cases per a position of prosecutor (occupied or not) in all trial courts in the county	2008	Superior Council of Magistracy

Appendix A (continued)

Variable	Description	Period	Source
Number of prosecutors	Number of positions of prosecutors assigned to individual counties	2008	Superior Council of Magistracy
Number of actually appointed prosecutors	Number of prosecutors actually appointed to individual counties	2008	Superior Council of Magistracy
Number of judges	Number of positions of judges assigned to individual Tribunals	2012	Superior Council of Magistracy
Number of actually appointed judges	Number of judges actually appointed to individual Tribunals	2012	Superior Council of Magistracy
Population	Total population, people	July 1, 2007	Romanian National Institute of Statistics
Roma	Share of ethnic Roma in the population, from 0 to 1	2002	Census
Russian Lippovan	Share of ethnic Russian Lippovan in the population, from 0 to 1	2002	Census
Serbs	Share of ethnic Serbs in the population, from 0 to 1	2002	Census
Tatars	Share of ethnic Tatars in the population, from 0 to 1	2002	Census
Turks	Share of ethnic Turks in the population, from 0 to 1	2002	Census
Ukrainians	Share of ethnic Ukrainians in the population, from 0 to 1	2002	Census
Unemployment	Share of registered unemployed, %	December 31, 2007	Romanian National Institute of Statistics
Urbanization	Share of urban population, %	July 1, 2007	Romanian National Institute of Statistics

Appendix B: Habsburg and Ottoman legacies in Romania

Table B1: Overview of Ottomanization, Hungarization and Romanization activities

	Ottoman regions	Habsburg regions
“Ottomanization”	Wallachia (1476-1829), Moldavia (1504-1829), Dobrogea (1419-1878)	Transylvania (1541-1690), Bukovina (until 1774)
Hungarization	-	1690-1918 (Transylvania) 1775-1918 (Bukovina)
Romanization / Centralization	Since 1829/1859 (since 1878 in Dobrogea)	Since 1918
Sovietization / Centralization	1945-1989	1945-1989

Sources: Maxim 2001; Brown 1996.

Table B2: Regional historical differences in Romania under the Ottoman and Habsburg Empires

	Ottoman regions (Moldavia, Wallachia, Dobrogea)	Habsburg regions (Transylvania)
Economic and structural development a. railway lines by 1900 (km per 100 th. pop) b. number of commercial banks in 1910-1911 c. output per capita in firms (horsepower and output data)	49 151 80	96 430 118
Illiteracy rates in towns (for the years 1900; 1910; 1930; 1948)	50.6%, 34.1%, 25%, 12.5%	27.4%, 21.5%, 13.1%, 6.7%
Minorities	Muslims, Russians, Ukrainians	Hungarians, Germans, Jews
Religion (1934)	Mainly Orthodox, few Muslims	Greek-Orthodox 4.8%), Greek- Catholic (25%), Catholic (17.1%), Calvinists (12.6%), Lutherans (4.9%), Jewish (3.5%)
Legal and judicial system	Customary law, French civil law, inefficient judiciary	Customary law, Austrian ABGB, Hungarian law, efficient judiciary
Informal institutions	Clientelist vertical net- works, corruption, few trust in state institutions	Horizontal networks, few corrup- tion, more trust in state institutions
Degree of foreign penetration	indirect “Ottomaniza- tion”	direct Magyarization

Sources: Illyes 1981; Sugar 1977; Maxim 2001; Macartney 1956; Lampe and Jackson 1982. Ethnic structure without Romani people, for which no data available

Appendix C: Marginal effects and robustness checks

Table C1: Marginal effects of Habsburg dummy for various income levels

Earnings per capita, lei	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
800	-42.772* (23.015)	-41.080* (21.506)	-49.135* (24.603)	-36.455* (20.670)	-53.049* (29.601)	-50.071* (25.838)	-45.155* (23.028)	-49.700* (28.865)	-47.574* (27.312)	-44.147* (22.955)	-42.812* (23.268)
825	-37.664* (20.997)	-35.191* (19.665)	-44.110* (22.689)	-31.808 (18.881)	-46.613* (27.462)	-43.331* (23.031)	-39.010* (20.721)	-43.245* (25.460)	-41.499* (24.249)	-38.654* (20.951)	-37.650* (21.169)
850	-32.555* (19.225)	-29.302 (18.102)	-39.086* (21.058)	-27.161 (17.358)	-40.177 (25.498)	-35.591* (20.480)	-32.861* (18.664)	-36.791 (22.341)	-35.422 (21.474)	-33.163* (19.235)	-32.487 (19.328)
1000	-1.906 (17.612)	6.034 (18.016)	-8.939 (20.427)	0.719 (17.258)	-1.561 (20.162)	3.848 (17.420)	4.019 (16.758)	1.936 (18.954)	1.038 (18.736)	-0.212 (18.824)	-1.511 (17.855)
1250	49.177 (40.1723)	64.926 (40.713)	41.306 (43.644)	47.186 (39.246)	62.799 (38.072)	71.248 (46.961)	65.487 (41.983)	66.480 (54.776)	61.804 (51.461)	54.705 (42.958)	50.117 (41.514)
1350	69.611 (51.247)	88.483* (51.566)	61.404 (55.097)	65.773 (49.740)	85.543* (48.722)	98.207 (60.824)	90.073 (53.975)	92.298 (71.154)	86.111 (66.598)	76.672 (54.524)	70.767 (52.999)

Note: standard errors in parentheses. Numbering of specifications corresponds to that of Table 3.
Standard errors and significance computed using the delta method.

Table C2: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position, Habsburg counties

	(3) OLS	(4) OLS	(5) OLS	(6) OLS	(7) OLS	(8) OLS	(9) OLS	(10) OLS	(11) OLS	(12) OLS	(13) OLS
Population	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Earnings	0.283** (0.095)	0.408*** (0.071)	0.349*** (0.089)	0.277*** (0.074)	0.302** (0.108)	0.388*** (0.096)	0.185** (0.077)	0.293*** (0.087)	0.323*** (0.079)	0.340** (0.137)	0.274** (0.106)
Unemployment	-3.612 (5.621)	-1.035 (4.836)	-1.341 (5.776)	-5.720 (4.513)	-3.661 (7.026)	-3.725 (5.270)	-1.205 (4.584)	-3.977 (5.603)	-3.832 (5.243)	-2.079 (6.271)	-3.539 (5.756)
Education (post-secondary)	0.002 (0.016)		0.004 (0.024)	-0.009 (0.022)	0.002 (0.021)	-0.006 (0.020)	0.013 (0.014)	-0.003 (0.020)	-0.009 (0.018)	-0.006 (0.015)	-0.001 (0.021)
Education (abandon rate)		-23.877** (7.774)									
Crime rate	-0.030 (0.029)	-0.052* (0.027)	-0.022 (0.032)	0.012 (0.029)	-0.028 (0.028)	-0.028 (0.028)	-0.048 (0.027)	-0.024 (0.032)	-0.021 (0.027)	-0.035 (0.033)	-0.026 (0.038)
Urbanization			-1.028 (0.876)								
Blue collars				-3.982** (1.692)							
Age > 65 years					2.383 (10.152)						
Age 40-64 years					-3.494 (4.849)						
Number of prosecutors						-7.654 (7.099)					
Number of actually assigned prosecutors							6.081* (3.052)				
Number of judges								-1.127 (1.717)			
Number of actually appointed judges									-2.253 (1.384)		
Efficiency of courts										-100.753 (121.416)	
Efficiency of prosecutors											-24.960 (81.447)
Constant	-111.559 (71.976)	-153.734** (59.575)	-145.050** (62.612)	106.649 (122.701)	-52.021 (191.567)	-144.962* (70.897)	-56.455 (55.068)	-120.727 (68.586)	-148.955* (68.043)	-81.295 (64.984)	-91.420 (93.035)
Observations	17	17	17	17	17	17	17	17	17	17	17
R²	0.464	0.642	0.516	0.594	0.482	0.522	0.561	0.484	0.544	0.490	0.471
J.-B. test	0.304	0.816	0.156	0.097	0.028	0.551	1.039	0.146	0.631	0.589	0.337

Note: see Table 3. Numbering of specifications corresponds to that of Table 3

Table C3: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position, Ottoman counties

	(3) OLS	(4) OLS	(5) OLS	(6) OLS	(7) OLS	(8) OLS	(9) OLS	(10) OLS	(11) OLS	(12) OLS	(13) OLS
Population	-0.000 (0.000)	-0.000 (0.000)	-0.000* (0.000)	-0.000* (0.000)	-0.000 (0.000)	-0.000** (0.000)	-0.000** (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000** (0.000)	-0.000 (0.000)
Earnings	-0.020 (0.143)	0.019 (0.147)	-0.104 (0.154)	0.016 (0.142)	-0.030 (0.138)	-0.061 (0.163)	-0.016 (0.151)	-0.056 (0.176)	-0.050 (0.168)	-0.010 (0.139)	-0.021 (0.147)
Unemployment	-8.296 (8.364)	-6.821 (7.177)	-7.012 (8.109)	-6.252 (8.582)	-9.768 (7.000)	-8.069 (8.671)	-8.549 (8.662)	-8.591 (8.728)	-8.551 (8.735)	-5.311 (8.556)	-8.383 (8.546)
Education (post-secondary)	0.056** (0.024)		0.055* (0.027)	0.056** (0.023)	0.053** (0.020)	0.056** (0.025)	0.053** (0.025)	0.055** (0.025)	0.054** (0.025)	0.070*** (0.016)	0.056** (0.024)
Education (abandon rate)		15.978 (20.121)									
Crime rate	-0.062 (0.044)	-0.060 (0.043)	-0.053 (0.043)	-0.065 (0.040)	-0.067 (0.041)	-0.074 (0.043)	-0.085* (0.046)	-0.070 (0.047)	-0.070 (0.047)	-0.034 (0.053)	-0.063 (0.045)
Urbanization			1.517 (0.904)								
Blue collars				-1.712 (1.533)							
Age > 65 years					-7.081 (5.469)						
Age 40-64 years					-8.330 (6.801)						
Number of prosecutors						3.193* (1.829)					
Number of actually assigned prosecutors							2.847 (1.716)				
Number of judges								0.395 (0.724)			
Number of actually assigned judges									0.376 (0.661)		
Efficiency of courts										-247.927 (203.320)	
Efficiency of prosecutors											-8.722 (108.251)
Constant	242.670* (124.695)	143.888 (129.476)	245.687* (135.236)	309.880* (166.408)	618.138*** (206.781)	293.377* (144.451)	274.274* (134.163)	291.046 (177.335)	285.127 (167.668)	392.218** (162.401)	252.23 (150.150)
Observations	24	24	24	24	24	24	24	24	24	24	24
R²	0.312	0.167	0.375	0.347	0.448	0.356	0.358	0.32	0.32	0.352	0.312
J.-B. test	3.640	2.125	3.648	3.762	2.180	3.627	3.510	3.718	3.785	2.481	3.632

Note: see Table C2

Table C4: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position, impact of the Hungarian minority

	(C1) OLS	(C2) OLS	(C3) OLS	(C4) OLS	(C5) OLS	(C6) OLS
Population	-0.000 (0.000)	-0.000 (0.000)	-0.000* (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Earnings	0.094 (0.094)	0.100 (0.098)	0.088 (0.098)	0.008 (0.114)	0.003 (0.118)	-0.027 (0.115)
Unemployment	-5.161 (4.802)	-5.457 (5.427)	-6.740 (5.521)	-6.384 (5.041)	-6.894 (5.249)	-8.080 (5.791)
Education (post-secondary)	0.036 (0.023)	0.037 (0.024)	0.036 (0.023)	0.031 (0.025)	0.035 (0.023)	0.045* (0.024)
Crime rate	-0.048* (0.024)	-0.048* (0.024)	-0.047* (0.026)	-0.045 (0.027)	-0.044 (0.027)	-0.044* (0.025)
Hungarians	-30.722 (34.273)	81.965 (489.889)	-11.750 (30.103)	19.854 (32.770)	408.395 (541.541)	
Hungarians * Earnings		-0.136 (0.605)			-0.525 (0.669)	
Habsburg			-14.650 (17.054)	-237.977* (121.865)		-220.233* (108.533)
Habsburg * Earnings				0.234* (0.126)		0.247** (0.111)
Non-Hungarian Habsburg region					-378.891** (174.721)	
Non-Hungarian Habsburg region * Earnings					0.394** (0.190)	
Hungarians						-4.619 (34.030)
Roma						-1,187.421 (695.589)
Germans						-2,791.906 (1,717.855)
Ukrainians						-758.993* (388.288)
Russian Lippovan						2,127.825 (3,708.971)
Turks						-12,147.492 (17,340.981)
Serbs						3,087.965* (1,579.051)
Tatars						14,414.721 (17,573.637)
Constant	101.156 (81.797)	98.136 (81.537)	118.858 (90.625)	179.704* (100.669)	187.361* (102.263)	254.292* (138.507)
Observations	41	41	41	41	41	41
R-squared	0.233	0.234	0.248	0.289	0.314	0.582
J-B test	6.576**	6.547**	5.147**	3.756	3.871	5.264*

Note: see Table 3. Outlier is Vrancea in all regressions with significant J.-B. test: after exclusion of the outlier effects of Habsburg dummy remain significant and maintain their sign. Running regressions controlling for the number of cases actually considered by the courts instead of crime rates does not change the results for Habsburg dummy and its interaction term with earnings, Hungarian minority and its interaction term with earnings and non-Hungarian population and its interaction term with earnings.

Table C5: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position, alternative proxies of inflow of cases

Specification	(3) OLS	(4) OLS	(5) OLS	(6) OLS	(7) OLS	(8) OLS	(9) OLS	(10) OLS	(11) OLS	(12) OLS	(13) OLS	(14) OLS
Total sample												
Control variable: number of criminal cases in trial courts per prosecutor												
Habsburg	-213.156*	-222.706*	-214.083*	-192.893*	-272.278**	-435.699	-265.088*	-241.205*	-232.58	-225.39	-228.534*	-213.639*
	(118.871)	(116.901)	(121.804)	(109.949)	(124.920)	(440.815)	(144.531)	(126.526)	(167.402)	(155.908)	(120.113)	(121.934)
Habsburg * earnings	0.212*	0.230*	0.208	0.193*	0.271**	0.509	0.268*	0.244*	0.233	0.225	0.230*	0.213*
	(0.122)	(0.122)	(0.127)	(0.113)	(0.123)	(0.451)	(0.148)	(0.130)	(0.172)	(0.160)	(0.125)	(0.125)
Control variable: total number of criminal cases in trial courts												
Habsburg	-226.197*	-250.885*	-224.840*	-188.342	-318.644**	-444.753	-276.464*	-222.606*	-225.441	-220.974	-247.173*	-231.539*
	(122.912)	(124.195)	(126.547)	(111.842)	(123.825)	(433.199)	(143.903)	(121.433)	(165.571)	(148.926)	(123.529)	(128.367)
Habsburg * earnings	0.225*	0.256*	0.218	0.190	0.318**	0.517	0.284*	0.228*	0.224	0.219	0.248*	0.231*
	(0.128)	(0.132)	(0.135)	(0.118)	(0.124)	(0.441)	(0.152)	(0.128)	(0.173)	(0.155)	(0.130)	(0.134)
Habsburg counties												
Control variable: number of criminal cases in trial courts per prosecutor												
Earnings	0.241**	0.323***	0.339**	0.283**	0.282**	0.365**	0.081	0.263**	0.304***	0.281**	0.231**	
	(0.096)	(0.101)	(0.130)	(0.092)	(0.118)	(0.139)	(0.071)	(0.096)	(0.089)	(0.126)	(0.094)	
Control variable: total number of criminal cases in trial courts												
Earnings	0.184*	0.257***	0.266**	0.213**	0.200**	0.294**	0.092	0.195**	0.229***	0.208	0.191*	
	(0.092)	(0.073)	(0.086)	(0.071)	(0.071)	(0.101)	(0.097)	(0.080)	(0.069)	(0.135)	(0.099)	
Ottoman counties												
Control variable: number of criminal cases in trial courts per prosecutor												
Earnings	-0.074	-0.047	-0.158	-0.042	-0.084	-0.106	-0.077	-0.077	-0.077	-0.045	-0.072	
	(0.116)	(0.123)	(0.126)	(0.111)	(0.122)	(0.137)	(0.122)	(0.165)	(0.154)	(0.113)	(0.114)	
Control variable: total number of criminal cases in trial courts												
Earnings	-0.077	-0.026	-0.142	-0.029	-0.149	-0.073	-0.014	-0.075	-0.076	-0.075	-0.078	
	(0.132)	(0.134)	(0.128)	(0.123)	(0.128)	(0.133)	(0.124)	(0.178)	(0.159)	(0.135)	(0.133)	

Note: see Table 3. Specifications correspond to those of Tables 3, C2 and C3; full list of covariates included in these regressions used, but their coefficients are not reported to make the presentation more economical. Regressions with the tripe interaction term not estimated for separate Habsburg and Ottoman samples, since the size of the sample becomes extremely small

Table C6: Determinants of demand for litigation, 2008; dep.var.: number of unresolved cases in the Tribunals processed by prosecutors per prosecutor's position, impact of emigration

	Full Sample	Only Habsburg	Only Ottoman
Population	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Earnings	0.009 (0.122)	0.334*** (0.080)	-0.017 (0.149)
Unemployment	-6.185 (5.011)	-2.706 (6.171)	-7.929 (8.717)
Education (post-secondary)	0.033 (0.023)	0.004 (0.018)	0.057 (0.025)
Education (abandon rate)			
Crime rate	-0.046* (0.026)	-0.036 (0.029)	-0.067 (0.047)
Emigration	0.010 (0.063)	-0.056 (0.101)	0.036 (0.105)
Habsburg	-205.713* (112.740)		
Habsburg * earnings	0.202* (0.115)		
Constant	182.323 (121.341)	-151.386** (64.924)	255.223 (150.069)
Observations	41	17	24
R2	0.286	0.484	0.317
J-B. test	3.658	0.205	3.863

Note: see Table 3. Figure C1 (below) after controlling for number of emigrants does not change

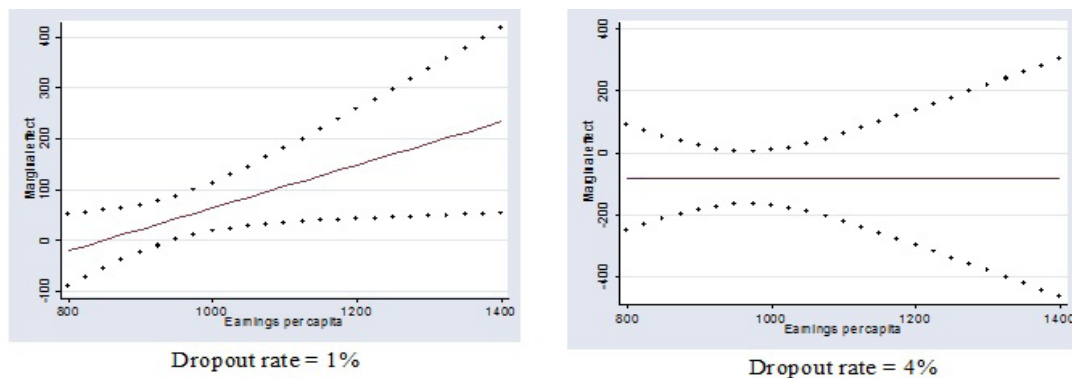


Figure C1: Impact of the Habsburg heritage on the demand for litigation in courts of appeal, conditional earnings per capita and school dropout rates (90% confidence interval)

Note: controlling for actual number of criminal cases in courts instead of crime rates does not change the results

Appendix D: Emigration rates from various regions of Romania

Region	Legacy	Emigration rate, 1996-2001	Emigration rate, 2002-2006
Banat	Habsburg	1.1	7.8
Bucuresti	Ottoman	1.6	2.3
Crisana-Maramures	Habsburg	1.6	9.9
Dobrogea	Ottoman	0.9	2.3
Moldova	Ottoman	5.8	28.4
Muntenia	Ottoman	4.3	21.7
Oltenia	Ottoman	2.5	9.3
Transylvania	Habsburg	6.3	19.7
Average Ottoman		3.0	12.8
Average Habsburg		3.0	12.5

Source: Open Society Institute 2006

Appendix E: Offenses and trial court cases

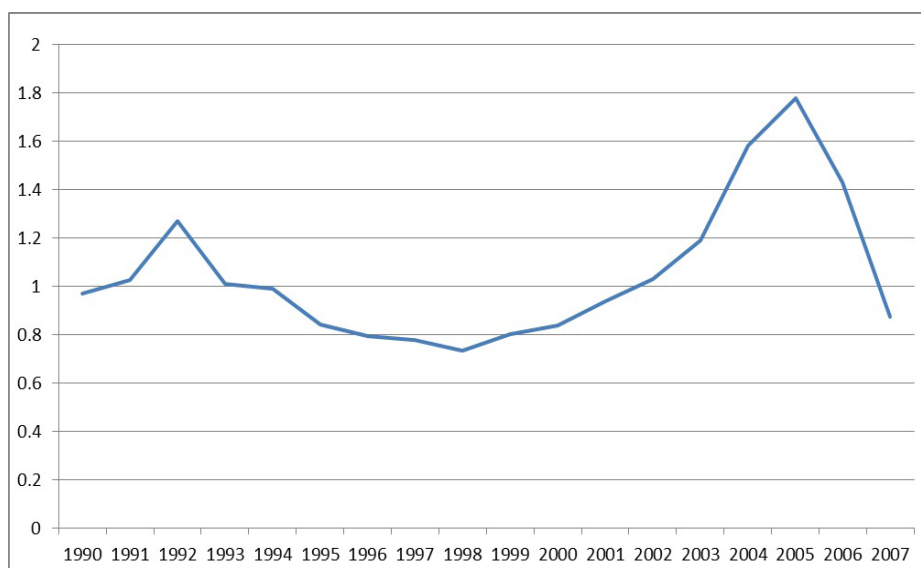


Figure E1: Ratio of number of criminal cases entering trial courts to the number of offenses investigated by the police in Romania

Source: Romanian National Institute of Statistics

Appendix F: Trust in justice in post-Socialist countries (in %)

	2002/2003	2004	2006	2008	2010	Δ	% Δ
Bulgaria	20	19	18	15	16	17.6	-20.00
Croatia	-	24	23	20	20	21.75	-16.67
Moldova	30	27	31	24	23	27	-23.33
Romania	28	28	30	27	23	27.2	-17.86
Serbia	36	32	30	10	23	26.2	-36.11
Average SEE	28.5	26	26.4	19.2	21	24.22	-22.79
Czech Republic	30	31	36	34	34	33	13.33
Estonia	44	46	50	58	55	50.6	25.00
Hungary	47	49	51	37	53	47.4	12.77
Latvia	35	35	32	30	36	33.6	2.86
Lithuania	24	28	24	27	22	25	-8.33
Poland	26	24	30	34	38	30.4	46.15
Slovakia	19	22	30	31	32	26.8	68.42
Slovenia	29	29	34	29	22	28.6	-24.14
Average CEE	31.75	33	35.875	35	36.5	34.425	17.01

Sources: Eurobarometer; Institutul de Politici Publice 2012 ; Slavujević 2010.

Appendix G: Appeal in Ottoman principalities

In Wallachia and Moldova the right to appeal judicial verdicts was guaranteed by law. This peculiarity stand in strong contrast to the proper Ottoman Empire where the right to appeal to the Sultan existed but had in practice few chances for success (Kuran and Lustig 2012). The possibility to appeal lower court verdicts was introduced with the rule of Constantin Mavrocordat who adopted in 1740 a Constitution creating the first instance judges (*ispravniks*) and second instance judges (the judgments of the high boyars) (Mercure de France 1742:1512). The courts of high boyars (appeal courts) were also replicated by successive Moldavian and Wallachian rulers (e.g. Racoviță, Ghica and Ipsilanti). Prince Alexandru Ipsilanti, who introduced the *Pravilniceasca condică* (in force from 1780 until 1818), structured the judicial system hierarchically into several departments (court levels) and clarified the possibilities of appeal among them. The decisions of the civil and penal department (*departamentul Vinovatorilor*) and two specialized penal departments (*Judecatoria ot Vel Spatar* and *Judecatoria ot Vel Aga*) could be appealed at the department of the great boyars (*departamentul Velitilor Boieri*) which again could be appealed at the highest court (the Divan) (Dariescu 2008).

The appeal of penal cases should be done in writing within a period of 60 days before the Divan. The sentence of the Divan if confirmed by the prince was final; however, it was always possible to re-appeal if the prince changed. The Divan consisted of a high and a low Divan. The former was the highest court of appeal. It was led by the metropolitan bishop and chaired by the prince and consisted of 10-15 members in Wallachia and 20-30 members in Moldova, who were recruited from the nobility (Thornton 1807: 415). The later dealt with minor cases or the preparation of important cases for the High Divan. The High Divan had also a criminal department which dealt with serious criminal cases (murderer, robbery etc.) (Iakovenko in Filitti et

al. 2004:896). The criminal tribunal was composed of noblemen of the second class. All criminal proceedings were examined every Saturday by the prince himself, who was joined by the *armasc*, i.e. the governor of the public prisons (Thornton 1807: 415). Foreigners had a special legal status: they could appeal the decision of the prince and refer the case to the Sultan (Pertusier 1822:69).

The first modern code of Wallachia, the *Legiuirea Caragea* (Caragea's Law) (in force from 1818-1865) specified the following simple appeal procedure (translated from German by the authors):

Art. 7. The judgment of a prince can be appealed before another prince.

Art.8. If the judgment of a prince was annulled by another prince then there is the possibility to appeal before a third prince.

Art 9. The possibility to appeal ends when a prince's judgment is confirmed by two princes.

Art. 10. The trial investigated by three princes should not be appealed. (Brailoiu 1865:424-425; see also Zacharia 1840:433-434).

Communication in and with courts could be done in Romanian (introduced already in 1727 by prince Ghi-ca), there was enough time (60 days) after the verdict to launch an appeal and appeals of small cases (until 500 piastre) could be made also orally (Neigbaur 1848: 49).

Appendix H: Appeal process in Habsburg territories

While according to the law the right to appeal existed (although was limited, as described below), numerous laws made the appeal process extremely difficult. The appeal process was constrained by detailed, complicated and restrictive regulations which described in detail who, when and how appeals could be launched. It happened quite often that appeals were rejected on procedural grounds, for instance due to non-observance of the regulations. The law contained numerous technical regulations to be followed in case of the appeal. Appeals of severe criminal cases (e.g. murder) either remained in the hands of the free royal cities or were treated directly at the high royal court and thus could be appealed only once (Steeger 1834:206-207), contrary to the practice in the Romanian principalities. In addition, the following factors limited the ability to appeal.

First, in most penal trials (e.g. petty crime and violence) the judgment of the first instance court was not halted but executed, a discouragement for most peasants to launch appeals. According to Paget (1850:183)

“the right of appeal is undoubted, but it was what the Hungarian law-books call “*extra dominium*” without, in the meantime, arresting the execution of the first judgment; so that, if the refractory peasant had received his five-and-twenty blows, he might appeal against its injustice, but his master's cruelty had nevertheless enjoyed its savage indulgence.”

This type of sentences, while not always beneficial for the accused, favored the injured party, for instance when it could receive its stolen object (debts) back despite the launch of an appeal. In the case of long and severe cases or when a judicial verdict was already confirmed by a second court instance the execution of verdicts was however repealed by an appeal (Schuler von Libloy 1848:88 and 223). The law (royal decrees) regulated in detail execution of which cases could be halted by the appeal (see Jung 1818: 244; and Steeger 1834: 208). Peasants were restricted in their right to appeal; the nobility could appeal all criminal cases (Springer 1840:126), though the procedure was costly for them as well.

Second, a fine could be imposed to discourage excessive appeals. This fine (also known as *Articularstrafe* or *birsag*) was also introduced to guarantee that trials and verdicts were in accordance with existing laws and formalities, i.e. in the case of a nullity appeal. To inhibit the malicious conduct of appeal cases, for instance which were unjustified or served to delay trials (*muthwillige Appellationen*) several fines could be applied, such as fines between 10 and 300 Gulden, the payment of the trial costs, paying back the costs of purchased services and even a penalty of arrest (Jung 1818:321f; Schuler von Libloy 1848: 95; Sentz 1852:387).

Finally, launching appeals in Transylvania was quite costly for the majority of citizens, which were mostly peasants (Schwartner 1811:270). Trials and above all appeals were linked to significant court costs (*Gerichtstaxen*) for the copy or translation of documents, for seals, fines, etc); for the list of all trial-related costs see Steeger (1834). Undoubtedly, the bureaucratic and formalistic approach towards justice (imposed by a strong judicial and bureaucratic cast) increased trial costs. Furthermore, trials were conducted either in Latin (until 1805) or in Hungarian. The law “On Equal Rights for the Nationalities (Minorities)” (Legislative act XLIV/1868), which allowed everybody to use the native language during a trial, “remained a dead letter” in practice (Seton-Watson 1911:161). As Hungarian judges could not understand the Romanian-speaking parties and vice versa all necessary legal documents which were issued in another language than Hungarian had to be translated by the parties at their own expense. This included all correspondence with courts, the issue of indictments, verdicts, the representation by lawyers etc. (Popovici 1918:135).

Appendix I: Appeal process in modern Romania

Like in most other continental law countries, in modern Romania the appeal is addressed to the hierarchically superior court. There is one ordinary appeal procedure, the appeal (*apel*) and three extraordinary appeal procedures, the recourse (*recurs*), the contestation for annulment (*contestatia in anulare*), and the revision (*revizuirea*) (with the introduction of the new civil and penal procedure codes in 2010, the *recurs*, which was an ordinary mean of appeal, was transformed into an extraordinary remedy. Several other modifications aim to increase the speed of court trials and to improve the coherence of the system). First, the appeal (*apel*) is used to appeal most cases from the trial courts (*judecatorii*) which are heard at the tribunals. Tribunal cases can be appealed at the courts of appeals and the Supreme Court hears appeals from the courts of appeal as well as from the military courts. The time limit for launching the appeal is 10 days in penal cases and 30 days in civil cases. Appeals have a suspensive effect. Second, the three extraordinary appeal procedures serve as means to contest the legality of judicial decisions. The *recurs* can be launched within 30 days and serves as a final appeal at the Supreme Court. The *contestatia in anulare* allows appealing any final judicial decision for a variety of motives (on details see penal procedure code art. 426). The *revision* is used to reconsider any final decisions which were unlawful or unfounded (e.g. discovering of new facts unknown to the judge, decisions based on perjury or on false documents, committed offences by the judge or prosecutor who conducted the investigation). Finally, there is an “appeal in the interest of the law” (*recursul in interesul legii*) which aims to safeguard the unitary interpretation of law (unitary jurisprudence). This remedy can be initiated upon the initiative of all courts and other judicial actors (e.g. the Prosecutor general, the Ministry of Justice, and the Ombudsman) when decisions of the courts are contradictory and inconsistent. It gives the Supreme Court the right to issue precedent decisions, without however changing the outcome of the previously decided case. The costs of appeal in modern Romania are low, giving sufficient access to this instrument to the litigants.