

INSTITUTIONALIZED CORRUPTION AT ROMANIA'S THIRD LARGEST COMPANY

An analysis of the several instances of state capture during
the past fifteen years in a company often financed from
public money.



This publication has been supported in part by the European Union and in part by a grant from the Foundation Open Society Institute in cooperation with the Think Tank Fund of the Open Society Foundations. The content of this report is the sole responsibility of Bankwatch Romania and does not reflect in any way the position of the European Union.

Bankwatch Romania and CEE Bankwatch Network are also grateful to the following donors for their ongoing support of our work:

- European Climate Foundation;
- Charles Stewart Mott Foundation;
- International Visegrad Fund;
- Sigrid Rausing Trust.



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Published by Bankwatch Romania, member of CEE Bankwatch Network. July 2016

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An online version of this report is available at www.faracarbune.ro/captura-statului.



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Executive summary

This report tells the story of the Oltenia Energy Complex (OEC) and the entities it has incorporated over the past fifteen years, focusing on the many corruption cases in which the company was involved. The third largest Romanian employer at over 15 000, OEC was established in 2012 when the companies that operate the largest lignite power plants and the mines that deliver their coal merged, which today includes ten mines and four power plants.

The report is built around a central case study: the corruption investigation of Dan Şova and Victor Ponta, members of the Romanian Parliament and important figures of the Social Democrat Party. Beginning in 2006, the Şova and Associates law firm (S&A) signed a series of contracts with power plants from Gorj County. While the documents followed public acquisition procedures, their value was increased several times through addenda. Although services were acquired for legal aid in order to implement a project to bring emissions in line with European standards, the company was represented in court by said law firm in other cases, despite the fact that it had an internal legal department.

Furthermore, Turceni and Rovinari Energy Complexes signed other addenda with Şova and Associates in order to finalise transactions outside of the court system. But these were carried out only in order to provide the law firm with a success bonus, as both sides of the transactions were interested in such a deal.

Prosecutors claim in the indictment that Victor Ponta enabled these contracts that benefit only the law firm. It continues that as parliamentarian for Gorj County since 2004 and one of the most promising figures of the Social Democrat Party who later became Romania's Prime Minister, Ponta has used his influence in the county to facilitate the contracts. Ponta signed a collaboration convention with Sova and Associates in 2007 for which he received EUR 40 000, however the invoices for this amount were not backed by documents to justify them.

In our report, boxes are inserted throughout the text, briefly presenting other cases of state capture in which the Oltenia Energy Complex was involved. The case of 'luxury expropriated' details how OEC directors and local politicians bought dilapidated houses next to the mines and received in exchange from the company villas in the town of Târgu Jiu. Two audits, one from the National Agency for Fiscal Administration and one from the prime minister's Control Body, have found unjustified sponsorships and huge expenses for 'artistic actions.' OEC also bought a bulldozer from a Gorj County parliamentarian for which it paid EUR 200 000, several times more than the amount the broken museum piece was worth.

The last part of the report tells the story of the involvement of a public bank – the European Bank for Reconstruction and Development – via a loan for building a desulphurisation unit at Turceni Power Plant, the same investment for which the company contracted the services of the law firm. The EUR 200 million loan was delayed for four years,

during which it was contested by civil society organisations as it breached the bank’s social and environment policies. European money did not reach Gorj in the end, but OEC paid over EUR 2 million in fees.

The report concludes with a series of recommendations to discourage corrupt practices and disable state capture mechanisms. Lessons are to be drawn from this case, and it is crucial that large infrastructure financiers better investigate companies before doing business with them, and monitor them from that moment onwards.

Another key element is the need for transparency of both the lender and recipient, which should include national public institutions, the press and watchdog organisations. Finally, several other factors, such as environmental violations or preferential treatment from the state, should be an incentive for increased due diligence by public banks.

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1. Introduction

This report tells the eventful story of the Oltenia Energy Complex (OEC) during the past fifteen years, focusing on the many corruption cases in which the company was involved.

OEC is today the third biggest Romanian company in terms of employees – 15 268, as of 31 December 2015¹. It was established in 2012 through the merger of Oltenia National Lignite Company and three large Energy Complexes – namely Rovinari, Turceni and Craiova. 10 open-pit mines and 4 power plants are managed today by the company. Its shareholders are the Romanian State through the Energy Ministry (77.15%), Fondul Proprietatea investment fund (21.56%)², Electrocentrale Grup SA (0.84%) and Mine Closure and Conservation (0.44%). The mining activities started in 1957, while the power plants were built between 1964 and 1987.

Bankwatch Romania's mission is to prevent the harmful social and environmental impact of projects financed from public banks. We have thus began investigating the state capture mechanisms from Oltenia Energy Complex since 2012, when the company refinanced a loan from the European Bank for Reconstruction and Development for a desulphurisation installation for Turceni power plant unit 6. We have been monitoring the company's activity ever since, taking action whenever we have noticed a breach of law or activities which could have a negative impact on the environment.



Rovinari power plant is visible from the entrance in town.

This report shows that corruption became an institutionalized practice at the Oltenia Energy Complex. Although all cases presented in the report have already been featured on the local

¹ <http://ceoltenia.ro/job-uri/locurile-noastre-de-munca/>

² "Fondul Proprietatea was set up by the Romanian Government in December 2005 to indemnify persons whose assets were abusively expropriated by the communist regime (especially in cases when restitution in kind would not be possible) by granting shares in Fondul Proprietatea to the respective persons." . www.fondulproprietatea.ro/about-fund/fund-overview.

or national public agenda, the evolution of state capture practices inside the company has never been analysed before.

This story relies exclusively on documents published by various state institutions, such as the National Agency for Fiscal Administration or the Control Body of the Prime Minister. Other pieces of research or media scandals and accusations surrounding the company without being backed by public documents were not included. A key basis for this report is the 98-page indictment of the National Anticorruption Directorate³ on the illegal contracts between OEC and the law firm Șova and Associates between 2006 and 2009.

There are several text boxes throughout the report focusing on other state capture cases related to OEC, one of them culminating with the imprisonment of two directors of the company.

Finally, the report studies public financing related to OEC, in particular the support of a European public financial institution – the European Bank for Reconstruction and Development (EBRD). It formulates recommendations for this public institution, based on the lessons learnt from the compelling story of OEC.

2. “Illegal” legal aid for the Rovinari power plant

The first part of the story brings us to the Rovinari coal power plant, held by the Oltenia Energy Complex (OEC).

2.1. The story of controversial legal assistance contracts

As the power plant fleet of the OEC is old, the company needed to modernise the existing units in order to comply with the latest European pollution legislation and thus to continue operating. This was especially the case for the Rovinari Energy Complex (REC), a major coal-fired power station in Romania.

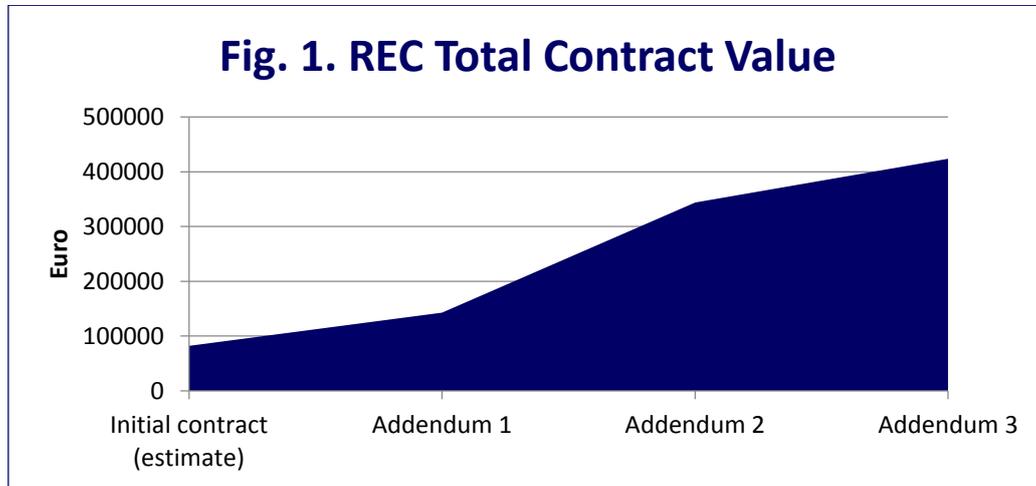
In 2006, Laurențiu Ciurel - the Investment Director of REC who later became General Director of REC in 2007 and of OEC in 2012 - recommended the company management a legal assistance contract with a law firm for these planned investments⁴. Ciurel was also the one writing the tender requirements document, estimating the cost of this necessary legal assistance at RON 280 000 (EUR 82 000⁵). Dan Șova, coordinating attorney of Șova and Associates Law Firm (S&A), visited Rovinari in January 2007. One month later, the call for tender was sent to 8 law firms, and in March S&A was awarded the contract valid until the end of the year.

³ Penal File no. 122/P/2012, Indictment 16.09.2015, National Anticorruption Directorate. Hereafter “Indictment”. <http://www.legal-news.ro/wp-content/uploads/2015/09/Rechizitoriu-Ponta-%C5%9Fi-Sova-anonimizat1.pdf>

⁴ Indictment, p. 11.

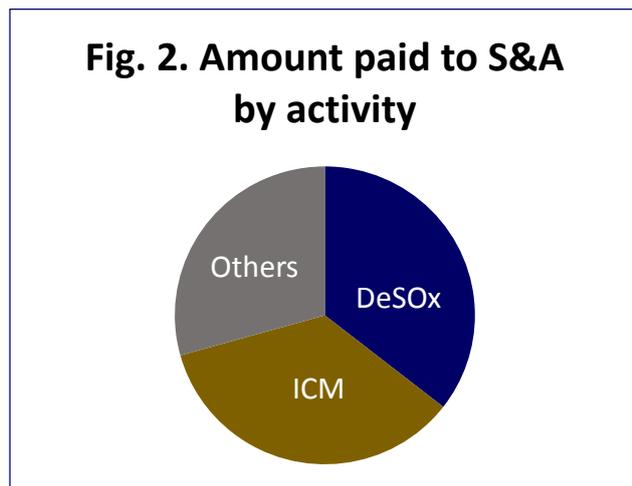
⁵ In order to avoid confusion, hereafter prices will be expressed in EUR, converted from RON on InforEuro - http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm, using the conversion rate at the time of the transaction, or the last month of the respective year. Sums are rounded up.

However, in September and December two addenda to the original contract were signed for continuation of the legal assistance service, increasing the value of the contract with EUR 61 000 and 201 000 respectively, extending it until December 2008. One day after expiration, a third addendum was signed for an additional year and an extra amount of EUR 80 000.



The total amount paid by OEC based on the contract and the addenda was of EUR 560 000, which is almost EUR 140 000 more than foreseen initially. The later-to-come Indictment splits the payments made to Şova and Associates into three categories: for the desulphurisation (EUR 297 000), for a lawsuit (see below – EUR 294 000), and for other legal services (EUR 245 000). This took place despite the fact that the company only approved legal services for the desulphurisation project. In addition, there was no criterion used to estimate the value of the second addendum worth EUR 201 000. The fact that the amount paid for that addendum was almost double further proves this: after all, the necessary work hours were neither estimated⁶.

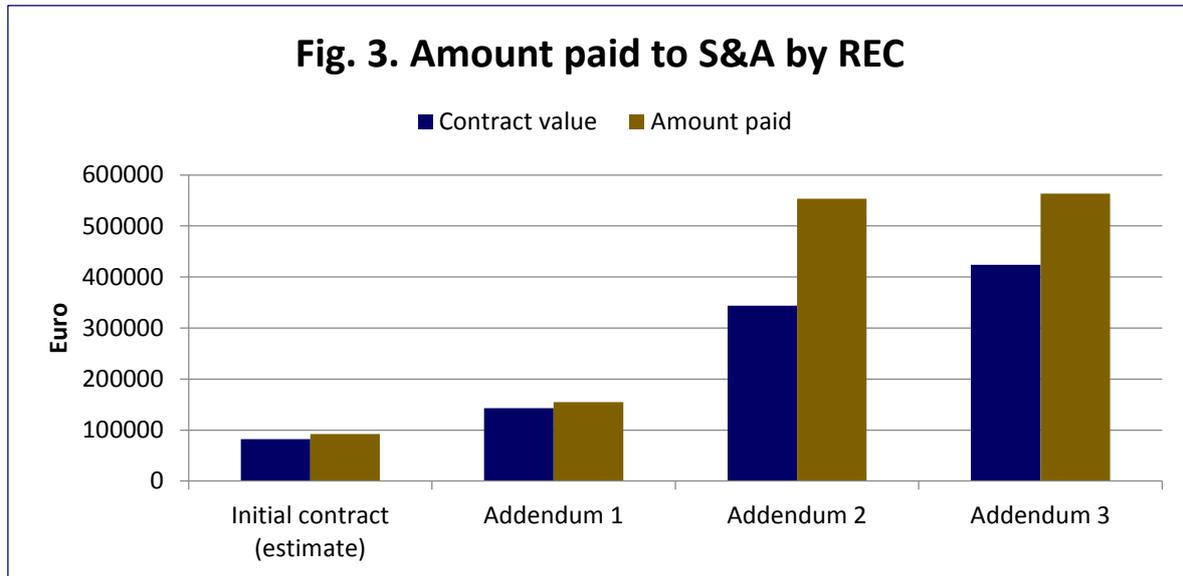
It is equally relevant to dig into the origin of the money used for this contract. None of the 63 invoices issued by S&A were paid from the annual program of public acquisitions (the standard way to foot such bills), but rather from the company's investment fund. It remains unclear how OEC will explain how legal assistance represents an investment. Although the desulphurisation unit can be considered an investment, the services provided by a law firm for lawsuits and other legal advice cannot seem to fall under this category.



It is also questionable if contracting services for other lawsuits was necessary at all. As any company of its size, REC had a full time Legal Department which employed 8 legal counsellors

⁶ Indictment, p. 15

in 2007 and 2008, and 13 in 2009. In this period, they represented REC in 409 lawsuits, and the salary expenditure was of approximately EUR 400 000⁷. Meanwhile, Şova and Associates handled only 13 cases, for which they were remunerated around EUR 260 000. The prosecutors were unable to find significant differences in the nature, object and complexity between the lawsuits for which the company used internal and external resources.



Audit finds lavish spending

In 2011, the National Agency for Fiscal Administration (NAFA) audited the activity of REC and TEC between 2007 and 2009. The audit's conclusions are that the two companies diminished their income with approx. EUR 7.8 million and increased their expenses with approx. EUR 10.6 million, consequently distorting their financial results by EUR 18.3 million. This was *inter alia* caused by illegal sportive, cultural and social actions, sponsorships, or undue expenditure on legal assistance. Due to the gravity of the accounting errors which could be considered crimes, NAFA passed the audits to the National Anticorruption Directorate to further investigate⁸. This was again the subject of a media scandal, after a member of the Romanian Parliament requested clarifications on the matter from the Minister of Public Finance⁹.

⁷ Indictment, p. 24.

⁸ <http://www.cdep.ro/interpel/2012/r4092B.pdf>

⁹ <http://www.gandul.info/stiri/anaf-a-sesizat-dna-in-urma-unor-controale-facute-la-unitatile-miniere-si-energetice-din-gorj-9480769>

2.2. A predictable win

SC Închiderea și Conservarea Minelor SA (Mine Closure and Conservation, ICM hereafter) was established in 2004 in order to settle the debts of mines incorporated in new energy complexes (such as Rovinari or Turceni) and to close down the remaining unprofitable mines. But the system had a major flaw: the newly created companies like REC still had debts towards ICM and its predecessor. Therefore, the Romanian Parliament passed Law 243/2005 which increased the capital of the energy complexes, and the resulting shares were then transferred to ICM to compensate for the debts.

Table no. 1: Companies created through Government Decision 103/2004			
ONLC unit	Process	Termoelectrica units	New company
ME Rovinari	merges with	Rovinari PP	REC*
ME Jilț, ME Drăgotești	merges with	Turceni PP	TEC*
ME Berbești	merges with	Ișalnița PP, Craiova II PP	CEC*
6 mining exploitations	become		SNLO*
the rest	renamed		ICM

* Companies which have merged in 2012 in order to create Oltenia Energy Complex

However, this procedure was not finalised in 2006, when ICM became bankrupt. Its liquidator thus requested in court in December 2007 to be repaid EUR 22.5 million, the value of the shares that were never received, in addition to an inflation adjustment of EUR 6.4 million. This, of course, ignored the fact that ICM itself was set up to relieve the energy complexes of such debts. Although Law 243/2005 relieved REC of obligations to ICM (through its capital increase)¹⁰ and ICM was obliged through a government decision to receive the debts of mine exploitations¹¹, REC signed with Șova and Associates another legal assistance contract in February 2008. The contract stipulated that if the attorneys were able to settle outside of court an agreement to pay ICM EUR 22.5 million in several instalments over the course of at least three years, they would receive a success fee of 1%. Five days later, the transaction was completed, setting the payment period at 5 years¹².

There are several factors suggesting that the February contract was signed only so that S&A would receive the EUR 225 000 fee. First, REC was already receiving counsel from the law firm on the basis of the second addendum referred to in the previous section. This lawsuit is specifically mentioned on the invoice for the services offered under the second addendum. Second, there was no indication that the company will be forced to immediately pay ICM. Third, REC's General Director was aware that the creditor was interested in a transaction – such a request was formulated by ICM since October 2007, before going to court. Finally, the

¹⁰ <http://www.legex.ro/Legea-243-2005-50639.aspx>

¹¹ <http://www.minind.ro/minister/H103-04.html>

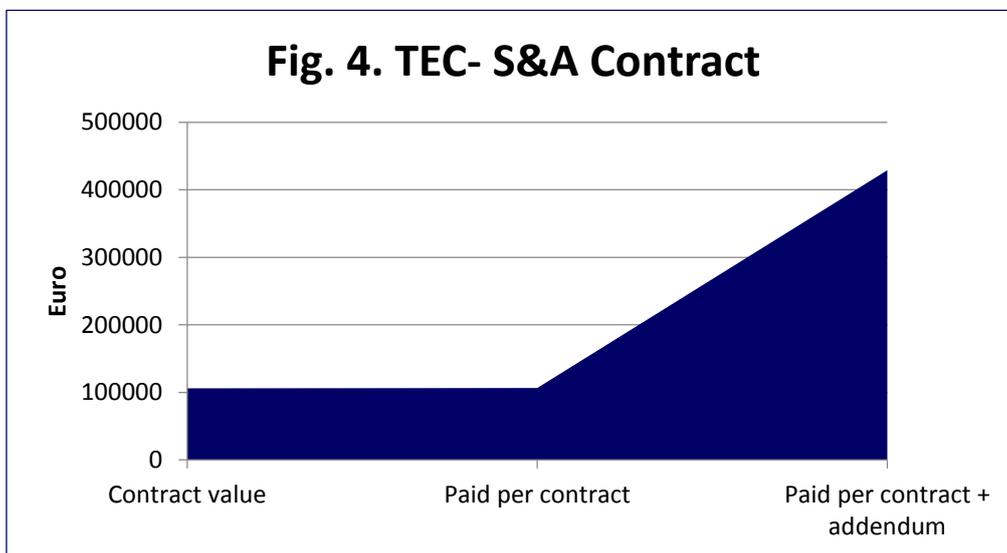
¹² Indictment, p. 32-33

General Director never requested the opinion of the Legal Department on the transaction or the new contract with S&A. It is also worth mentioning that the contract was directly attributed to the law firm, ignoring the public acquisition procedure¹³.

3. A different company, but similar methods: the Turceni Energy Complex

3.1. Another tale of dubious legal aid contracts

The contract between REC and S&A was already underway when the General Director of Turceni Energy Complex (TEC, another coal-fired power plant) Dumitru Cristea initiated an urgent selection procedure for similar legal services. On 6 June 2007 the annual acquisition program was modified to include "Legal Counsel Service" worth EUR 105 000. The call for tender was sent to three law firms, and 10 days later Şova and Associates was declared the winner. The contract, valid until the end of the year, was signed on 23 July 2007. As it happened with REC, an addendum prolonging the validity of the initial contract until December 2008 was signed directly with S&A. This was done without following the regular public acquisition procedure or estimating its cost. As in the case of the REC contracts, the addendum was paid from the investment budget. TEC disbursed EUR 106 000 and EUR 429 000 respectively for the contract and its addendum.



¹³ Indictment, p. 34-37

Luxury expropriated

Public prosecutors started investigating in 2005 how expropriations for mine expansion were carried out in Știucani, a village bordering the Roșiuța and Jiț Sud coal mines. They discovered that 22 notable men from Gorj county, later called by the press the “luxury resettled”, had bought decrepit houses in the village, knowing that they were about to be expropriated. Some of them were OEC (then Oltenia National Lignite Company - ONLC) directors, union leaders and heads of local public administration. Upon negotiation with the company, they received houses in Târgu Jiu town which were several times more expensive¹⁴. For example, Gorj County Council President Ion Călinoiu received in exchange for two old houses he had bought for EUR 1600 a villa valued on average at USD 300 per square meter¹⁵. All the “luxury resettled” received compensations for their properties, as well as for the “trauma caused by being displaced”¹⁶.



Știucani village (highlighted area) is surrounded by mines. U.S. Geological Survey map

For various procedural reasons, only the ONLC General Director Ion Vulpe and the Director of Human Resources Ionel Manțog (who later became Secretary of State in the Ministry of Economy) were accused of corruption by the prosecutors. The latter bought three houses in Știucani for EUR 10 000 and received from ONLC EUR 148 000¹⁷. The lawsuit, which began in 2006, concluded in 2012 with a 5 year prison sentence for both directors. They were released earlier for good behaviour: Vulpe in December 2013¹⁸ and Manțog in May 2015¹⁹.

¹⁴ <http://www.romanalibera.ro/actualitate/fapt-divers/stramutati-de-lux--urmariti-penal--43629>

¹⁵ http://www.pandurul.ro/articol/cererea-lui-mantog-respinsa-de-curtea-constitution_15450.html

¹⁶ <http://www.romanalibera.ro/actualitate/eveniment/-stamatii-de-lux--au-ramas-tot-sefi--29600>

¹⁷ <http://www.hotnews.ro/ancheta-7477215-dosarul-stamatii-lux-ionel-mantog.htm>

¹⁸ <http://www.gorj-domino.ro/stamatul-de-lux-ion-vulpe-liber-de-sarbatori-magistratii-l-au-eliberat-conditionat/>

¹⁹ http://www.pandurul.ro/articol/mantog-liberat-conditionat-din-penitenciarul-targu_66750.html

In February 2007, General Director Dumitru Cristea was named president of the tender evaluation committee for legal assistance at REC, from that position being able to see the law firms' offers. The prosecutors consider that the entire public acquisition process was falsified in order for Şova and Associates to win. Only two other firms received the call for tender: both were associated to S&A and its owners in the past and were managed by individuals close to Şova, who also knew the price offered by one of the companies²⁰. Furthermore, the offer from S&A was received one day after the deadline, but it was registered at TEC using the date of 14.06.2007 instead of 15.06.2007²¹.



Several housing units built in Mătăşari village for Jiţ miners were never finished.

²⁰ Indictment, p. 52.

²¹ Indictment, p. 53.

Another similarity with the REC case is the fact that while the contract with S&A was ongoing, TEC had an in-house Legal Department. EUR 430 000 was spent between 2007 and 2008 on the salaries of full time legal counsellors, who have represented TEC in ten times more lawsuits than S&A.

3.2. More wins, more losses

In October 2007, TEC filed in court a complaint against Electrica, Romania's main electricity distributor, requesting EUR 4.7 million as penalties for the late payment of the electricity received. TEC's in-house Legal Department lodged the complaint and demanded the penalty to apply to unpaid bills from September to December 2004. As the state was the sole owner of Electrica and the majority owner of TEC, there was a strong belief that the action in court would be successful. However, TEC's management and S&A signed on 1 November 2007 yet another addendum to their initial contract, through which the law firm would be compensated for obtaining irrevocable decisions. The success fee depended on the size of the recovered amount: 1% for less than EUR 6.3 million, 2% for less than EUR 15.7 million, and 3% for more than EUR 15.7 million²².



Turceni power plant. Image by Emilian Robert Vicol, adapted and used under a Creative Commons BY 2.0 licence

Five days later, S&A modified the complaint, requesting the return of the entire debt: EUR 20.4 million, corresponding to a longer time period for unpaid bills. The documents justifying that time extension were however not submitted to the court, as the General Director and head attorney expected to settle the debt outside of court. This indeed happened at the end

²² Indictment, p. 59-60.

of November. According to the new transaction, Electrica was to pay EUR 14.3 million during 8 years, starting in 2008. The agreement was to cover all penalties until December 2006, even though they were never calculated. It also claimed that no penalties were to be paid after that date²³.

Inexplicably, although the transaction covered a longer period, the sum agreed upon was EUR 6.1 million smaller than the one requested in court. TEC's Economic Director Octavian Graure then threatened to fire his subordinates when they refused to modify the debts' values in the company's records. The employees later confessed to the prosecutors that they then accepted and randomly decreased the value of 50 invoices²⁴. It resulted in the company losing more than EUR 6 million, just to ensure that the law firm will receive its success fee.

Finally, an almost identical lawsuit as the one between REC and ICM took place in 2008 between TEC and ICM. As the former lawsuit was presented in detail in the previous chapter, we will now only focus on the most important details. The legal assistance contract granted a success fee of 1.5% to S&A if the law firm managed to reach an agreement for a transaction in instalments over three years. Five days after the contract was signed, the transaction took place and S&A received EUR 334 000 for their services. The contract was awarded to S&A without following the public acquisition procedure and without an explicit mandate from the Board of Directors of TEC²⁵.

Control Body of the Prime Minister finds unjustified expenses

The Prime Minister sent his Control Body²⁶ to Oltenia Energy Complex to audit the activity between 2010 and 2012 of the companies which merged to create OEC. The findings were presented to the press in a 2013 report, highlighting the suspicious activities of the energy complexes over the three years²⁷. In this period, the companies spent EUR 4.6 million on 76 sponsorships. 155 contracts worth EUR 74.5 million for the acquisition of various goods and services went to only three companies. Existing public tender contracts had their value illegally increased by more than 20%. Other tender documents were not approved by the Government, or included technical specificities which allowed only one potential winner. As the contracts created the premise for a corruption case, the findings of the report were transmitted to the National Anticorruption Directorate.

²³ Indictment, p. 62-63.

²⁴ Indictment, p. 64.

²⁵ Indictment, p. 68-72.

²⁶ "The structure without legal personality, under the Prime Minister's authority, headed by a Secretary of State, appointed and removed from office by Prime Minister's Decision, and funded through the budget of the Secretariat -General of the Government; it controls and monitors the activity of Ministries and their decentralized public services, public institutions under Government's authority, specialized bodies of the central public administration subordinated to the Government, offices, departments, commissions, autonomous companies, national companies and societies." - <http://gov.ro/en/government/organization/government-working-apparatus>

²⁷ http://media.hotnews.ro/media_server1/document-2013-05-7-14758164-0-sintezacomplexulenergeticoltenia-1.pdf

4. VIP involvement: Prime Minister Ponta and falsified documents

The prosecutors show in the indictment that the previously described contracts between Şova and Associates and both REC and TEC were made possible through the involvement of Victor Ponta²⁸.

Born in 1972, both his professional and political career ascended quickly. In 1998 he became one of the Supreme Court of Justice's youngest prosecutors in history, handling economic and financial crimes in the anticorruption division. A promising figure of the Social Democrat Party, since 2004 Ponta is a Member of Parliament representing Gorj, the county where the Rovinari and Turceni energy complexes operate, as well as the lignite mines²⁹.

In August 2007, a collaboration convention was signed between Şova and Associates and Individual Attorney Office Ponta Victor-Viorel. According to this convention, Victor Ponta would receive a monthly amount of EUR 2000 for work done in partnership. An addendum in March 2008 modified the sum to EUR 3000. 17 invoices were issued until December 2008, totalling EUR 40 000.

But in fact Victor Ponta did not provide any services for this amount³⁰. This was discovered in 2011, when the National Agency for Fiscal Administration audited the activity of both law firms and found that the above mentioned invoices were not accompanied by any supporting documents justifying the payments. Ponta claimed that he offered legal aid orally, however he was unable to name the clients and the object of the lawsuits for which he was remunerated³¹. Together with S&A, he was able to later produce legal activity reports, which the prosecutors identified as being identical copies to assistance offered to a different client by four lawyers of S&A³².

The NAFA audit hit the news in 2011 and dominated the public agenda for several weeks. Victor Ponta was not prime minister yet, but he and Şova were then the leading figures of the Social Democrat Party (a prominent Romanian political party), the former being its president at the time.

In fact, the prosecutors showed that the convention between S&A and Victor Ponta was signed as a means to compensate the latter for the role he played in the TEC and REC contracts. Also in 2008, Şova and Associates acquired a sports car for company use, which turned out to be only driven by Ponta for personal purposes. As it was purchased by the law firm, it was exempt of VAT and other taxes totalling almost EUR 15 000³³.

In order to distance himself from the case, Dan-Coman Şova submitted documents from 2005-2009 claiming that he was not involved in the contracts between the law firm and REC and TEC. According to him, his visits to the power plants were made out of "corporate

²⁸ Indictment, p. 77.

²⁹ <http://www.ziare.com/victor-ponta/biografie>

³⁰ Indictment, p. 76-77.

³¹ Indictment, p. 78.

³² Indictment, p. 79.

³³ Indictment, p. 83-85.

courtesy". The documents presented claimed that each client was assigned a coordinating attorney by the S&A general assembly. Upon investigation, the prosecutors discovered that this practice never existed in the law firm. These documents were actually produced in 2010-2011 and antedated during the media scandal surrounding the two power plants. Those falsifying the documents have admitted their deed³⁴.

„Buldo-tank”

A corruption investigation which was followed by a long lawsuit and definitive sentences surrounded the acquisition of a bulldozer on continuous track (or tank tread). Hence the case was called in the press “Buldo-tank”. A company owned indirectly by Mugurel Surupăceanu, Romanian politician and Member of the Parliament between 2008 and 2012, sold to Turceni Energy Complex a bulldozer for four times its import price. The company was not selling similar vehicles and had no employees, and the piece of equipment was broken³⁵. According to the prosecutors, Surupăceanu guided the TEC director at the time, Mirel Cristea, throughout the entire acquisition process. As Surupăceanu was a MP, the case was judged in Romania's Highest Court. In 2012 the judges came close to a conclusion, so he resigned from the Parliament, meaning that the lawsuit had to be moved to a county court and be started from scratch. In 2013, the Gorj Tribunal sentenced Surupăceanu to 7 years and Cristea to 6 years in prison, while two other directors received suspended sentences. All four were supposed to pay EUR 187 000 in damages to Oltenia Energy Complex. However, an Appeal Court acquitted Surupăceanu in February 2015, while all other suspects received suspended prison sentences. As OEC did not request compensation for damages, it did not receive any. Nevertheless, OEC's shareholders are today considering requesting the due damages³⁶.

5. When a public bank comes in: EBRD financing to Turceni at odds with its own policies

A EUR 150 million loan was approved by the European Bank for Reconstruction and Development (EBRD) in 2008 for the modernization of units 3 and 6 of the Turceni power plant³⁷.

Nevertheless, the project never saw the light of day and in early 2013 the EBRD decided to restructure and re-finance the loan arranged for the Turceni project, which turned into a EUR 200 million syndicated loan meant only for unit 6.

Following the due diligence and environmental and social analyses carried out by the EBRD, the project summary document available on the Bank's website was updated with a less

³⁴ Indictment, p. 44, 75.

³⁵ http://www.pandurul.ro/articol/surupaceanu-cristea-si-co-%E2%80%93-trimisi-de-dna-in-jud_2228.html

³⁶ http://www.pandurul.ro/articol/ceo-incearca-a-doua-oara-redeschiderea-dosarului-b_78149.html

³⁷ <http://www.publictenders.net/tender/175748>

ambitious CO₂ emission reduction target: from 300 000 tonnes per year to only 160 000 tonnes.

The NGO Bankwatch Romania has been monitoring the activity of Oltenia Energy Complex and its impact on the environment, and was thus familiar with the many corruption cases in which the company was involved. Hence it sent in 2013 its criticisms to the Bank about this loan and, together with the NGO Frank Bold, it lodged to the Bank a complaint against the refinancing in 2014³⁸. The complaint claimed that the loan was breaching the EBRD's Environmental and Social Policy because the project was not complying with European Environmental Impact Assessments (EIA)³⁹ and industrial emissions (IED)⁴⁰ directives. Other claims were related to the lack of assessment of the deforestation directly linked to the project and the weak consideration of the corruption allegations presented above.

While investigating the EBRD loan, Bankwatch Romania requested the disclosure of the support letter for the loan from the Romanian Department of Energy in the Ministry of Economy and sent at EBRD's request. The letter was, however, never published. As there were several problems with the project, it was important to understand the Government's reasoning for supporting such a loan. Although it was public information, the Ministry even appealed the court decision after the NGO sued the Department (later the Ministry of Energy) and won the lawsuit⁴¹. Coincidentally, on the same day that the appeal of the Ministry was rejected by the court, the EBRD updated the project summary document and confirmed that the loan for Turceni was cancelled⁴². However, OEC still had to pay EUR 2.9 million in commissions and fees to the EBRD for not being able to use the loan. Meanwhile, Turceni Unit 6 was dismantled as it became too inefficient.⁴³

Although it is not possible to prove that the EBRD held any information about the corrupt practices at TEC between 2006 and 2009, Oltenia Energy Complex appeared in the press several times because of corruption allegations. At the same time, the EBRD stated that "there is no history of prosecution associated with the company"⁴⁴. This claim completely ignores the local realities: although it was true that at the time there was no final sentence given by the courts, the number of existing lawsuits and investigations, as well as the evidence brought forward by prosecutors and the fact that several Members of the Parliament were involved could at least raise suspicion and make the EBRD more cautious about its support to a controversial company. Even when contacted directly by civil society organisations and presented with evidence that there were several problems related to the project, the Bank proved to be very slow to take any action.

³⁸ http://www.ebrd.com/downloads/integrity/olt_complaint.pdf

³⁹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

⁴⁰ Directive 2010/75/EU of the European Parliaments and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

⁴¹ http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=300000000596988&id_inst=2

⁴² <http://bankwatch.org/news-media/for-journalists/press-releases/ebrd-suspends-loan-romanian-coal-plant-turceni#notes>

⁴³ http://www.pandurul.ro/articol/ceo-pune-pe-lista-investitiilor-din-2015-un-grup-i_71852.html

⁴⁴ <http://bankwatch.org/news-media/for-journalists/press-releases/ebrd-soft-coal-sector-corruption-new-analysis-shows>

Other instances of state capture

Cases suspect of corruption continued to surround Oltenia Energy Complex after their relation with EBRD finished. For example, in November 2014 OEC was supposed to export 1.2 million tons of coal to Serbia. The contract was however cancelled after more than half the quantity was delivered, but the Romanian company only received EUR 500 000 or 6% of the due payment. OEC was selling coal at a price lower than that of production through a company set up one month before the contract was signed⁴⁵. However, such cases will not be analysed in depth here, as they are not indicative of EBRD's behaviour with corrupt companies.

6. Recommendations and Conclusions

- The Turceni corruption case dominated the Romanian public agenda in 2011. Despite this story being out there, the European Bank for Reconstruction and Development stuck to the fact that (at least until 2013) no individuals were sentenced. All the evidence presented by the prosecutors and mainstream media were therefore ignored. Furthermore, a basic online search for "Turceni Energy Complex" would return several articles from the local press with various corruption allegations. This report only presented the most striking cases.
- The Bank should therefore monitor closely the companies to which it grants its loans and enhance its due diligence in relation to fraud and integrity as part of its "Know Your Counterpart" procedures. In this case, it seems that a basic internet research on relevant companies should have been enough to gather information constituting a red line for the EBRD. Without serious willingness to tackle such issues, the EBRD is projecting the image of an institution little interested in the social effects of the projects it finances.
- The European Bank for Reconstruction and Development should step up its transparency level, especially in cases where national or regional authorities are reluctant to disclose documents of public interest. We have seen how opaque Romanian institutions can be: the Department for Energy refused to publish the support letter for the loan, and the court ruling came only after the loan was cancelled. Hence, the EBRD should either publish all the relevant documents, or mandate the companies benefiting from its loans to do so themselves.
- Romania's National Anticorruption Directorate is an efficient institution with proven results⁴⁶. In this context, it is key for the EBRD to work with this institution before approving projects which can deepen state capture and bear adverse social impacts.

⁴⁵ <http://bankwatch.org/news-media/blog/unpaid-coal-bill-romanian-coal-exports-serbia-marred-corruption>

⁴⁶ <http://www.politico.eu/article/the-dna-of-romania-anti-corruption-success-eu-transparency-international/>

- The Bank should make public which companies it investigates and what conclusions it draws from those investigations. The project summary document for the Oltenia Energy Complex, available on EBRD's website, does not clarify sufficiently the reasons for cancelling the loan.
- Apart from possible state capture, which can be slow to prove, several other factors should be an incentive for increased due diligence: environmental violations, preferential treatment from the state (taking the form of subvention or friendly legislation), and the company's transparency track record.



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Acronym list

NAFA	National Agency for Fiscal Administration
DeSOx	Desulphurisation installation
EBRD	European Bank for Reconstruction and Development
CEC	Craiova Energy Complex (under this name until 2012)
OEC	Oltenia Energy Complex (under this name since 2012)
REC	Rovinari Energy Complex (under this name until 2012)
TEC	Turcenii Energy Complex (under this name until 2012)
ONLC	Oltenia National Lignite Company (under this name until 2012)
ME	Mining exploitation
ICM	Mine Closure and Conservation (SC Închidere și Conservare Mine, established in 2004)
S&A	Șova and Associates Law Firm (Casa de Avocatură Șova și Asociații)
ONLB	Oltenia National Lignite Business (under this name until 2012)
PP	Power plant

Figure list

Figure 1: Total value of the contracts between REC and S&A.

Figure 2: Amount paid to S&A, divided by activity.

Figure 3: Amount paid to S&A by REC.

Figure 4: Contract between the law firm and TEC.

Table list

Table no. 1: Companies created through Government Decision 103/2004.

It is important that financiers of large infrastructure projects are familiar with the companies before signing contracts, and to monitor them afterwards. Transparency of both the loaner and the loaned are equally crucial. It would facilitate the intervention of national public institutions, the press and civil society organisations.



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