

**AN UNCONVENTIONAL APPROACH TO THE  
VICTIMIZING EFFECT OF LAW AND ITS POSSIBLE  
INFLUENCES ON NATIONAL SECURITY - AN ANALYSIS OF  
THE ROMANIAN LEGAL SYSTEM**

**Abstract:**

*We live in a world more legalized than ever, but more alien to the true spirit of the law than ever before! A hyper-formatted, hyper-normative, hyper-hierarchical universe of conformity and normativity has been created and seems to expand relentlessly, which provokes the fear of the individual and works according to a quasi-similar logic. It already encompasses and dominates important areas of society, such as business, administration, health, education, culture and institutionalized science in the letter and, above all, in the spirit of its data.*

*The "normative" system says the law, decides a priori who is right, elaborates laws, administers and governs, establishes strategic guidelines, appoints in school, university or academy, guides the media, is everywhere and anytime. But the right it thus claims to express, by which it protects himself and ensures its reproduction is distorted to such an extent that, in order to avoid collapse, it becomes absolutely necessary to abandon it quickly and return to the idea and practice of true law!*

*Especially in Romania, where, after the coup d'état of December 1989, the allogeneic, anti-Romanian state, traitor of nation and country, is waging a deaf fight against the Romanian nation, a criminal legislation, as we will see, which, due to its character they criminogenously affect national security, with the consequence of condemning the Romanian people to extinction! What to do? We began to answer such a question by referring to the new philosophers of law, such as the Frenchman J.J. Sarfati, in his work *Redonner sens au mot "droit"*<sup>1</sup>, but also approaching, unconventionally, the victimizing effect of law, trying an analysis from the legal, economic, social and political point of view of the Romanian legal system. And here we have in mind a multitude of aspects generated mainly by the idea that there are strange*

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<sup>1</sup> Jean-Jacques Sarfati, *Redonner sens au mot „droit”*, Éditeur Connaissances et savoirs, Paris, 2017

	<i>epochs in the evolution of society, such as the current one, in which humanity seems to be entering a smooth dissolution. We believe that when it comes to the victimizing effect of law, it is necessary to keep in mind that, in the contemporary period, the role and impact of law on society must be viewed from a dual perspective: the positive, as a factor in ordering social relations (the most widespread and developed at the moment) and negative as a victimizing and criminogenic factor of its recipients, materialized by neglecting, ignoring or violating their rights and freedoms (scientifically ignored perspective).</i>
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**Introduction**

This paper is intended to be writing designed to contribute to the knowledge of legal reality as a social phenomenon. It is an analysis that addresses from a legal-criminological perspective the victimizing effect of the law, with the stated intention to contribute to finding out the truth about the hidden and dark side of the law, for both legal and non-legal readers. It is not at all an easy undertaking as it seems at first sight. We admit that this because both the language - in this case, as a means of written communication with the reader - and the topic approached were carefully chosen to achieve the purpose of the essay approach, namely that of legal information. We try through the content of ideas about law as a criminogenic phenomenon of social life to see why the law has come to bear this burden because in a modern and democratic society people must acquire skills designed to allow them to know and interpret legal texts. It will also address the diachronic presentation of law, as well as the connections religion-law, morality-law, state-law, etc., being dominant the link between law and culture that contributes, in the opinion of a distinguished author, to the enthronement of the spirit. of legality. At the same time, this study can mark a beginning in the research of the victimizing nature of law, the stated intention being to present the main features and ways of manifestation, based on a valuable bibliography that can encourage reading for additional legal knowledge. Then, the study is a tribute to the law and, at the same time, a convincing urge to know the law and legal thinking.

Our approach to legal research is written in good faith, respecting both the ethics and the rule of law, stating from the outset that we rely on the provisions of the Romanian Constitution and Law no. 51 of July 29, 1991 on the national security of Romania, republished<sup>1</sup>. More precisely, art. 54 of the Fundamental Law enshrine, as a fundamental duty, fidelity to the country, which is sacred, but also the right and obligation of the citizens to defend Romania. In the infra-constitutional norms of the Law on national security we find, in art. 1 definition of national security "Romania's national security means the state of legality, balance and social, economic and political stability necessary for the existence and development of the Romanian national state as a sovereign, unitary, independent and indivisible state, maintaining the rule of law and the climate of exercise unrestricted rights, freedoms and fundamental duties of citizens, in accordance with the democratic principles and norms established by the Constitution". Furthermore, in the same law, we find that the threats to Romania's national security are legally arranged. We must also mention the provisions according to which "Romanian citizens, as an expression of their loyalty to the country, have a moral duty to contribute to the achievement of national security". From the perspective of the research object, we will approach only the state of legality as an element of national security, leaving the specialists in the other fields to express their points of view. Is the current state of Romanian law with its victimizing effect a direct threat to national security? The answer can only be affirmative, which we will try to prove.

Therefore, the work is full of unequal, partial, unscrupulous, violent, contradictory, insolent passion, like all the writings of those who love without being ashamed of their loves. I allow myself to be cynical, because I believe that this study, unlike so many full of wisdom and kindness, is a lively endeavor. I did not want to make a history of Romanian law that is no longer even a discipline of study in our law faculties and no collection of essays on the legal dementia he was subjected to in the almost 50 years of Judeo-Bolshevik communism, continued , after the December 1989 coup by their descendants, allogeneic neo-Marxists. My attempt is not intended to inform readers of what exactly the unhappy people are talking about, or to make rigorous interpretations or scholarly comments on their ways of healing the world from its diseases. This paper is an excerpt from an intellectual autobiography. It is a product of my release from certain things that have made me suffer when I see that Europe and the whole world are in chaos, because the measures those governments are taking to prevent the spread of the Covid-19 virus do ten times more harm than good; the virus itself, both physical and economic. People everywhere can no longer tolerate the blatant and shameless lies that national and international authorities, as well as the media, repeat endlessly through every official and mainstream channel, causing untold

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<sup>1</sup> Law no. 51 of July 29, 1991 on the national security of Romania, was published in the Official Gazette no. 163 of August 7, 1991 and republished in the Official Gazette no. 515 of 14 August 2013

psychological and emotional harm to every human being on the planet. Every human being on the planet is now painfully aware that the fundamental rights and freedoms for which countless generations have fought and died no longer exist and that those in power have established a global totalitarian state under the pretext of a pandemic. More and more people in every corner of the globe are waking up to the reality that the Covid-19 virus is a political invention and that the world is not in the throes of a pandemic, but a pandemic, a man-made pandemic, and so on illusory.

We live in very turbulent times, and a very short inventory of risks, which I, as a lawyer, part of a *lato sensu* culture, foresee. I don't know if I'm much systematized, but I cut my speech into another key to interpretation, then the official and well-known one from the press reports enslaved to the occult, allogeneic, anti-Romanian system that leads the country where I live today. In a random, non-exhaustive order, I will argue the causes of this major slippage of law and democracy. As we all know, law is about democracy. I think that risk no. 1 in a logical and chronological order is the divorce between law and democracy; democracy, as much as it was and as far as I know. We face the risk of transforming the democratic regime, as it was, into a technocratic, authoritarian regime, dominated by martial law, bureaucratic and instructional, far removed from principles. Then, I think we face a risk of skidding specific to totalitarian systems; restriction of fundamental rights and freedoms under various pretexts. I will not go into details now, we will develop something later. What is also serious is the fact that we are very close to a risk that means uncovering the meaning of culture, civilization and law and transforming meaning into nonsense or antisense. I think we are very close to the time when freedom means slavery, power means ignorance and peace means war. Yes, when it comes to local law, I think we are in a crisis of local law. As long as a minister of justice in this country says that human rights are a luxury, as long as a prime minister of that country challenges the binding decisions of the Romanian Constitutional Court, as long as the People's Advocate is unconstitutionally dismissed and no one answers, as long as a lawyer is criminally convicted for his legal opinions as wrong, in what legal system do we live?

In the God-given years of my life, I have heard speeches of remarkable magnitude and quality, which speak of law and culture, of kindness, love, altruism, generosity, all as a link between culture and law. That means the need to say things by name. I believe in that. I think that's what lawyers are missing today. And not just lawyers. I think we get too drunk with cold water. I feel the need for very open debates in which to say things by name. I will not now engage in a critical analysis of the legal system, of the relationship between law and culture, of the relationship between law, culture and contemporary civilization, from my humble perspective. But if, as the children of Vitoria-Gasteiz National Justice say, the truth is all that matters, then we must always strive to bring the truth to light. We cannot hide behind our fingers and we must admit that the Romanian legal system is going

through a serious crisis; and, with it, the Romanian culture and civilization, and, with them, the universal culture, civilization and justice<sup>1</sup>.

We have the impression that we live in times when both law and culture are spit in my soul, and the image of justice, which is the mirror image of society, reminded me of a snag, which is very dear to me, but I sadly admit that I do not know who it probably belongs to Voltaire, who said: "God created man in His own image and likeness. And man returned the favor and created God in His image and likeness."<sup>2</sup> I'm afraid we live in such times because, after all, the clergyman says, "It all depends on the weather and the circumstances," and my thoughts somehow come from the turmoil in my area of human rights research. And I thought about the etymology of the word culture. It comes from the verb *colo*, cholera, to cultivate. To cultivate means to know, to know what you cultivate, to know how to take care of what you cultivate and then to appreciate what has borne fruit, what has come out of what you have cultivated. Culture has to do with nature, with the natural world, it has to do with the human being, with human nature, it has to do with divinity and all the unseen forces that somehow order this perfectly created Universe, from my point of view, as Professor Dulcan said, an intelligent Universe. And then I think that culture is the conduit between the past and the future, because culture tells us what to do and what not to do, how to act and how not to act. So here are the values, here are the rules. After all, it was culture that shaped law, and law, in turn, shaped culture. Somehow, culture today has to do with the relationship between man and nature, between man and man and between man and divinity. All of these are, in fact, power relations, if we think about it, power relations. Only something has happened in recent years. It has happened that this old culture has been attacked by new technologies, by modern anti-culture technologies. New technologies, which, in fact, promote hostility towards the love of nation, love of country, love of values, after all, and I believe that this fracture or these anti-culture technologies do nothing but disconnect culture from nature, disconnect culture of the human being, to disconnect the culture of law. Therefore, I believe that we can only go from disorder to disorder. We get to that chaos; we somehow get to that imbalance for our healthy life<sup>3</sup>. We feel the need to raise a question about my own understanding in the different contexts we face. In contemporary society, people have gained almost automaticity in confirming that they have understood, but it is not clear to us what element marks the moment of understanding. How many times have we penetrated the meaning of something beyond the subjectivity of our perception? How worried are we that we can't relate correctly to certain situations? The question of identifying certain marks of the ability to understand in which just the mere perception of a fact does not lead

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<sup>1</sup> The speech of Mr. Florentin Țuca during the Justice Day 2021, <https://www.universuljuridic.ro>, (16.04.2022)

<sup>2</sup> *Idem*

<sup>3</sup> James Gleick, *Chaos, The birth of a new science*, Publishing House Publica, Bucharest, 2020. p. 23

directly to the discovery of meaning is too complicated, I leave others more skilled to develop, I say only that the inadequate response to some situations appears in the absence of comprehensive intelligence, able to analyze the situation in depth and identify the levels of meaning. Even though access to information is fast and almost instantaneous in the current era, it cannot be a guarantee of clarification of facts or correct assessment of them. In this context, we point out that a deep understanding of the current situation of law would facilitate good coexistence in any community, would lead to finding out the truth about the recent history of law which is in fact our history of Romanians much falsified and now even banned. We will learn about the history of the Jews and the Holocaust! It is at the same time an exercise in memory: about the Judeo-Bolsheviks brought by the liberating Soviet tanks, about the holocaust of Romanian culture during the Stalinist period in which almost all of Romania's intellectual elite was decimated and the 1918 Great Union leaders ended in communist fears. Everything is connected, and the close memory also sends us to the terrorists of December 1989 (who, despite the revisionist narratives propagated especially by the former Securitate, existed and was Securitate, about the Ceausescu dictatorship and its main instrument of repression, the Securitate, about the fear that the latter instilled in the victims he left behind. But more on the December 1989 coup, a little further on. Until then, let's unravel the secrets of the holocaust of Romanian culture, the traces of which are still felt today; genocide that is being repeated now, but on a global scale, through a terrible pandemic bacteriological war. Because after every genocide that was applied to us, as soon as we got up, a claw from the four horizons tore our unconsolidated grip. But the holocaust of our culture has left the most terrible and unfortunate consequences, unimaginable for a peaceful people.

### **The Holocaust of Romanian culture in the Judeo-Bolshevik period of Stalinism**

The history of mankind abounds in horrors, the holocaust or genocide being part of the eternity of peoples. The Holocaust means complete extermination, usually by burning, a sacrifice that leaves only ashes. In a direct and figurative sense, after the Second World War, the Romanian culture underwent the treatment of a holocaust. It has been thrown into the furnaces and prisons of an intolerant political ideology, to free the ground for a "new" culture. After 1944, thanks to this imported ideology, all Romanian life was divided into two: the "past" and the "new" life, which was built by demolition, by destruction, by the holocaust of this past. The "past" was black and needed to be destroyed; the "future" was bright and needed to be built. All the Romanian values of the past were thrown, with non-existent or insignificant exceptions, at the "common grave" of the Holocaust programmed against the Romanian culture. They meant "the past," and an almost religious rage punished those who tried to save or maintain the values of the afflicted "past," increasing the proportions of sacrifice. The quarrel over the symbols of Romanian life and culture was barbaric: for example, no one took stock of the statues on the pedestal in the first post-war decade and did not analyze the

way in which they were destroyed. The statues were also given to the Holocaust: the group of statues on the road, dedicated to Ferdinand I, the Unifier, Mestrovici's creation, was thrown into the furnace and melted. It was more than a physical destruction: the transformation of sculpture into an informal matter also aimed at the disappearance of a cultural meaning<sup>1</sup>.

The same thing happened with the legal culture, the science of law and some of its servants, for example, Al. Otetelișanu, Mircea Djuvara, Valentin Al. Georgescu, Traian Ionașcu, Hurmuz Aznavorian, Petre Pandrea, H. Stahl, Dimitrie G. Lupu, First President of the High Court of Cassation and Justice, as well as lawyers and magistrates who stood out by elaborating significant scientific legal materials. It is known that the great cultured people of the nation had, as it was said in the press of the time, two GAZ cars (the ancestor of the off-road car M 461, produced in Câmpulung Muscel, the grandfather of the well-known ARO) at the gate of the house, where they could climb; one to the Academy and the University and the other to the White Gate or canal, the dreaded communist prisons. There were many who opted for collaboration with the communist authorities, giving up everything they had done before! Why did scientists choose, especially in the beginning, the path of collaboration, they accepted, without hesitation, out of opportunism, fear or conviction, to be used and legitimized by their name (especially when it had gained previous recognition) communist totalitarianism. Others have chosen not to do so. The former ensured a better life, functions that ensured them social prestige, ensured their ability to publish books, and secured their right to maintain public assertion<sup>2</sup>. "Meanwhile, other members of the intellectual elite were losing their jobs, their sources of income, their freedom, and their lives. Elimination from a prestigious intellectual position (academician, university professor) often meant a decisive step towards imprisonment and not in a few cases, given the inhuman conditions of detention, towards death"<sup>3</sup>.

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<sup>1</sup> Mihai Ungheanu, *The Holocaust of Romanian Culture. 1944-1989*, DBH Publishing House, Bucharest, 1999, <https://vladhogea.wordpress.com/2010/06/11/restituiri-mihai-ungheanu/>, (16.04.2022)

<sup>2</sup> The conclusion of Alexandru-Murad Mironov expressed at the end of the study entitled Benefits, privileges and rewards or the price of intellectuality in R.P.R. it is harsh, but in a sea of ambiguity and shades of gray, in a post-totalitarian transition as difficult as ours, things sometimes have to be said like this: intellectual was the most important advantage. For, otherwise, the intellectuals of the R.P.R. it was sold at a fairly low price." The study is published in the volume entitled *Romanian Intellectuals in the Archives of Communism*, Dan Cătănuș (coordinator), Nemira, Bucharest, 2006, p. 472.

<sup>3</sup> Every year, leading intellectuals perished in prison: in 1947, Traian Brăileanu; in 1949, Radu Rosetti; in 1950, Alexandru Lapedatu, Gheorghe Cuza, professor at the Faculty of Law in Iași, Mihail Manoilescu; in 1951, Istrate Micescu, professor at the Faculty of Law in Bucharest, Gheorghe Tașcă, professor at the Faculty of Law in Bucharest and at the Commercial Academy; Anton Golopenția; in 1952, Mircea Vulcănescu; in 1953, Gheorghe I. Brătianu. From the old Academy they went through prisons: Many professors from the Faculties of Law: Emil Hațieganu, George Fotino, Gh. Leon, Gheorghe Strat, Ion V. Gruia,

Indeed, for some professors, this decision to collaborate with the institutions of the communist regime came after a first purge from the Faculties. At one point, they were also victims, and we must not forget that. However, we must not forget anything else: the pact between the victim and the executioner emerges the winner, first of all, the latter, due to the legitimacy given by the assumed partnership of the victim, especially when the choice was not between life and death or between freedom and imprisonment. The choice was whether or not to put your skills to work in the regime's institutions. It is the option that does not put life or freedom first, but the temptation of professional pride, of keeping in public life, of writing. The victims who did not assume this, as were those mentioned by Petre Pandrea<sup>1</sup>, did not legitimize the executioner, but showed them and continue to show his true face. And this is even more necessary in the case of a communist dictatorship, a dictatorship based on a generalized lie, on demagoguery, on a humanism invoked only by the façade. In the case of such a dictatorship, the executioner must always point the finger, and not justified by shades of gray of a so-called good. These shades of gray do not matter as long as the communist regime killed people and kept Romanian society for half a century in a dictatorship. What else can you invoke in this picture? Beyond the humanism invoked by the façade, beyond the books that explained the ideology of the regime, beyond the new clothes of a so-called good, communism has always paraded naked. As far as I am concerned, I do not think that we should now try to show that he actually had a mantle of good, and we should not justify the facts by this argument. A wise saying of a great thinker: Evil always enters the world under the pretext of good. But a false good that some people have identified and have chosen to oppose or at least not cooperate with, knowing that in fact through this collaboration would only legitimize evil. A totalitarian communist regime is, after all, the same exponent of evil as a totalitarian fascist or Nazi regime. The dead are not left or right, they are just the result of the application of the ideology of a totalitarian regime. Therefore, any shades of gray of the good have no place, the law is put in the service of justice as we will try to analyze further<sup>2</sup>.

Many did the same after December 1989. Such an attempt to evoke their past and make it public was programmatically avoided. "The vast majority of those who hold leadership positions in the judiciary and in legal education have either worked in the system before 1989 or, and it is well known that justice is a caste, are descendants or have had teachers who they identified with communist justice. The

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Ion Fintescu. An incomplete list of those who lost their lives in communist prisons, a list from which I chose, in the context of my study today, without wanting to overshadow in any way the sacrifice of other victims, to emphasize the sacrifice of law professors.

<sup>1</sup> Petre Pandrea, *Memoirs of the Wallachian Mandarin*. vol. 1, Journal 1954-1956, Vreema Publishing House, Bucharest, 2011 and *Memoirs of the Wallachian Mandarin*. vol. 2, Journal 1957-1958, Vreema Publishing House, Bucharest, 2012.

<sup>2</sup> Radu Teodorescu, *The good in comparative religion*, Cugir, 2013, [https://amp.issuu.com/teodorescuradu4/docs/evil\\_in\\_world\\_religions/54](https://amp.issuu.com/teodorescuradu4/docs/evil_in_world_religions/54), (16.04.2022)



natural tendency of the author of a wrong, abusive or obedient sentence is to forget the mistakes of the past, showing reluctance to any tendency to re-evaluate his role. Reluctance is also taken over by their successors at the department. "We will give only one example, the unfortunate role of the military prosecutors from the Military Prosecutor's Office under the Ceausescu dictatorship. It is a well-known fact: many military prosecutors conscientiously obeyed the unwritten orders of the Securitate. For "legal" coverage, acts of political opposition were initially classified as "crimes against state security" (including the famous "propaganda against the socialist order", art. 166 of the Criminal Code). These cases were "investigated" by the Securitate in "close collaboration" with the military prosecutor's office. In reality, the military prosecutors only counter-signed, almost entirely, the "proposals" of the investigators of the Sixth Security Directorate, from the removal from criminal prosecution (if the investigated person was "positively influenced" or if it was decided disguise the case in a common law) until prosecution for "security" offenses. The reports of the Sixth Directorate show that virtually all the proposals of the security guards to prosecute the political cases were "resolved by the military prosecution bodies" and the military tribunals by prosecuting and convicting the respective opponents.

According to military prosecutor Ioan Dan, "I knew what it meant to be a prosecutor, even of the highest rank, when orders were given at such a level [Security]. The prosecutor was nothing more than an executive officer."<sup>1</sup> The cover of the Securitate's crimes immediately after the Revolution by the Military Prosecutor's Office was made under the direction of Chief Military Prosecutor Gheorghe Diaconescu, who, according to an overwhelming number of documents and testimonies, participated in the "legal coverage" of the repression in Timisoara. How did the staff of the Sixth Directorate become military prosecutors investigating the Revolution? It should be noted that most of the investigators of the 6th Directorate (Criminal Investigation) of the Securitate were briefly seconded from the Revolution, officially, to the Military Prosecutor's Office - including in Bucharest, Sibiu, Brasov - by the head of the Military Prosecutor's Office. that period, General Gheorghe Diaconescu. According to Magistrate General Ioan Dan, most of the time they were allowed to carry out effective research work on the causes of the Revolution, especially the activity of gathering evidence on the ground. In this way, security investigators - now acting as military prosecutors - were able to hide evidence. Ioan Dan had suspicions about the way in which his colleagues actually let themselves be "coordinated" by the former security guards, many of the prosecutors still being afraid of those from the 6th Directorate. Some military prosecutors have even demanded that they be suspended from certain cases for fear of those in the former Securitate. Ioan Dan also reported other cases in which former security officers, investigating shootings from the apartments of

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<sup>1</sup> Alecu Racoviceanu, SIPA Archive. "*In a hierarchy of culprits for political repression, the judiciary would be on a higher level than the security*", <https://evz.ro/arhiva-sipa-dezvaluiri-cracana.html>, (16.04.2022)

former colleagues of the institution, reported that in fact they were fired from the outside to the inside. A telling example for the above is the former officer of the 6th Security Directorate Nicu Crișan, who immediately after the Revolution was taken over, together with most of his colleagues, in the military prosecutor's office within the Army and then in the J Formation J of the SRI. Here is his statement, given in 2015 before the military prosecutor, in case 32 / P / 2014 (by which his former colleagues Pârvulescu Marin, Hodiș Vasile and Postelnicu Tudor were charged with committing the crime against humanity): "Immediately after December 1989, when we were transferred to the Ministry of National Defense, we received ID cards with the military unit code of the Ministry of National Defense and some powers of attorney signed, as far as I can remember, by the head of the Military Prosecutor's Office at that time, Gheorghe Diaconescu. all military units. I, for example, have checked several places where it is alleged that a fire broke out in the days of the Revolution. I do not know if all my colleagues have received such powers, but certainly many of us have received such a thing.

According to the authors, "this case offers a plausible explanation, namely that some military prosecutors destroyed and forged evidence in investigations conducted immediately after the Revolution. (Obviously, they manipulated them in favor of the perpetrators, respectively those of the "Fifth Directorate, USLA, CTS and other Security units, including special ones"<sup>1</sup>, according to Iulian Vlad.) And the explanation is simple: the respective "military prosecutors "They were in fact security guards from the Sixth Directorate, confirming the statements of Ioan Dan. The lack of professionalism and perseverance in the investigations and the attempts to "direct" them to preconceived conclusions were not accidental. They were based on the old subordination and enslavement of military prosecutors to the Securitate. With a directness and sincerity that puts his testimony above any doubt, the magistrate puts his finger on the wound of the institution in which he spent most of his career: The bias of the Ministry of Interior - Militia and Security - by the military prosecutor is confirmed by evidence. Moreover, in the files of the Timișoara Revolution, due to the eminently political nature of the repression, the facts fall under the legislation on crimes against humanity. The magistrates who worked on the files of the Revolution noticed these facts, but, suspiciously, did not include them in the mentioned crimes, generally considering them only "abuse of office", facts that in the end turned out to be amnestied. or prescribed. And yet, prosecutors noted: Demonstrators were brutally attacked on the evening of December 16, 1989 by militia intervention platoons and subunits of security forces and firefighters, who used sticks, tear gas and water cannons against them. Through these acts of violence, [the defendants], who refused to have open discussions with the masses of demonstrators, expressed their clear intention to repress any anti-dictatorship movement. Justice, the weeping eyes want to see you!

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<sup>1</sup> Andrei Ursu, Roland O. Thomasson, Madalin Hodor, *Shooters and Mysticians for details. Security Counter-Revolution in December 1989*, Polirom Publishing House, Iași, 2019

And their souls will bleed to see how former communist prosecutor Dan Voinea<sup>1</sup> a received more than 30 billion lei from his pension by 2022 and if he lives to the age of 80, he will receive more than 1.5 million euros from his pensions<sup>2</sup>. At the time of Voinea's retirement in 2009, at the age of 59, he obtained a pension of 18,500 lei per month, meanwhile the pension being indexed and substantially increased with the transfer of contributions to the gross salary invented by Olguța Vasilescu, the minister of sad memory. Returning to the prosecutor who investigated the files of the Revolution and Mining, Dan Voinea, it is worth mentioning that the Attorney General of Romania during the 15 years of prescription for the files of the Revolution and Mining, respectively December 2004-June 2005 was Ilie Botoș, also retired at the age of 51 with a pension of 24,000 lei, even if his income was 16,000 lei in activity. Of course, the pension has increased like Dan Voinea's. In addition, Ilie Botos buried the Fleet File. About the way those files were handled, the general prosecutor, at that time - 2009, Laura Codruța Kovesi, explained then the scandalous story of General Voinea with unbelievable details, if they had not been documented by the SCM inspectors, who found irregularities unprecedented in the investigation of the files of the Revolution and Mining: was committed. Are we talking about documents in the file and the beginning of criminal proceedings? Do you know how criminal proceedings began in these cases? On handwritten papers, handwritten, without legal classification, some names were written, 10-20 names, of which 10 or 15 people died, unregistered", Kovesi publicly accused the way in which the military prosecutor Dan Voinea was made to work. Until the spring of 2021, only prescriptive facts were investigated in the case of the Revolution, and one by one the defendants were released by prosecutors. But in 2021, the PCJJJ expanded its charges of genocide, which is indescribable.

Moreover, Laura Codruța Kovesi, who now heads the European Public Prosecutor's Office, described how the investigation was conducted in the

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<sup>1</sup> Dan Voinea has been a military prosecutor since 1982, and between 1997 and 2000 he was the head of the Military Prosecutor's Office of the Prosecutor's Office attached to the High Court of Cassation and Justice. In December 1989, he was brought by Ion Iliescu as a prosecutor to the trial of the Ceausescus, at that time having the rank of major in the Directorate of the Military Prosecutor's Office. Dan Voinea participated in the trial of Elena and Nicolae Ceaușescu, who drew up the "indictment" on the basis of which the two were sentenced to death and executed on December 25, 1989. Subsequently, Voinea was the one who handled two of the most important cases. post-December, that of the mining of 13-15 June 1990 and that of the Revolution of December 1989, managing the performance of delaying and completely m Dorina Lascăr, Unmasked at the Court that she supervised the cremation of the dead in '89, Dan Voinea has a pension of over 35,000 lei, she supervised the cremation of the dead in '89, taken from the website: <https://www.curentul.info>.astering the two files, for almost two decades.

<sup>2</sup> Dorina Lascăr, *Unmasked at the Court that she supervised the cremation of the dead in '89, Dan Voinea has a pension of over 35,000 lei, she supervised the cremation of the dead in '89*, <https://www.curentul.info>, (16.04.2022)

Revolution's case: "The prosecutors carried out a large number of procedural acts in question but did not capitalize on a large amount of information. They did not take any steps to declassify the documents regarding the hearings in the senatorial commission in the conditions in which thousands of hearings were carried out in this commission and although SRI has drawn up a large document, it is not found in the criminal investigation file. "It would have been necessary to obtain it," he said, noting that the hearings in the case were "synthetic and formal". without any justification in this regard in the file "and" the few ballistic examinations established only the type of ammunition and weapons but the weapons with which they were fired were not identified nor the shooters".

One of the reasons why Dan Voinea covered up the case may be his attempt to hide his involvement in the cremation of the dead in Timișoara. Journalist Vasile Surcel studied the testimonies from the "Timișoara Trial" and found that a statement once made in court by one of the defendants of the "Timișoara Lot" brings to the attention of former military prosecutor Gen. (r) Dan Voinea. But it also links him to one of the most horrible episodes of the Revolution: the cremation of the 42 corpses from Timișoara. Dan Voinea is well known to those who watched the film of the trial in Târgoviște, the one that ended with the execution of the Ceausescu: he was the prosecutor of that mock trial. Voinea read out the impromptu indictment, probably on his knees, and when he was given the floor, he pleaded for the two to be punished. Admittedly, in his capacity as accuser, he was much more balanced than the Ceausescu's ex-officio lawyers, lawyers who accused their "clients" as harshly as inquisitors. Then, in the years that followed, Dan Voinea became famous by the fact that, in his capacity as military prosecutor, he investigated, for years, the "Files of the Revolution"<sup>1</sup>. "Arrested in the very last days of 1989, the great donkeys of the communist regime were brought to justice in a series of trials in which what were later called "Revolution Files "were tried. Trials started to be blocked by returning the files to prosecutors who were asked to complete the investigation, and then resumed, to find out that the deeds were pardoned or prescribed. Thus, in the face of criminal justice, it came to pass that, in the end, historians were left alone to deal with the problems of the Revolution. They and the curious who still have the patience to read carefully the testimonies taken 32 years ago. And those testimonies are, even now, particularly interesting.

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<sup>1</sup> The ECHR has again condemned Romania following a lawsuit initiated by 23 people against the Romanian state. The plaintiffs or close relatives took part in the demonstrations and were injured or killed during the events of December 1989 in Bucharest, Slobozia, Targoviste and Resita, which led to the overthrow of the communist regime. According to the sentence, Romania must pay the 23 applicants, within three months, non-pecuniary damages of 15,000 euros each and the related court fees. The decision comes after last year another 81 victims or descendants of those who were wounded, tortured or killed in the Revolution received from the Romanian state over 800 thousand euros, which we expect the Ministry of Finance to recover from those guilty, since according to art. 12 of O.G. no. 94/1999, the state has the right of recourse against the persons who, through their activity, with guilt, determined its obligation to pay the amounts established by ECHR decision.

And one of these statements is the one that connects prosecutor Dan Voinea with the dead cremated at the "Cinderella" Crematorium.

Heard at the end of 1990 during the first trial on the merits of the "Timișoara Revolution" trial, the defendant Ion Baciu, former head of the Economic Directorate within the Militia, wanted to specify at the end of his testimony: "The last issue, Mr. President, I declared to you on the occasion of the presentation of the material, I do not know if it was further verified, that on the 20th, at 10.10, Mr. Lt.-Colonel Voinea Dan, accompanied by another military prosecutor in military uniform, who spoke with the respective personnel; I was there and I was waiting for the car to come and hand over the ash bins and in about 10 minutes they left ". Well, although the proceedings oblige the president of the full court to ensure the exact recording of those who are brought to the notice, the magistrate asked the clerk to record only that: incineration, two military prosecutors showed up at the crematorium", what did they do? Were they interested in what? "So, he refused to mention the name of the prosecutor Baciu had talked about. Then he was given the floor again, at which point he said, "I was nearby, and he got in touch with a worker, Geta. Those who worked are afraid that something will happen to them. The judge asked them to write down only: corpses and those workers are afraid that something unpleasant will happen to them. "At the next moment, Baciu also stated that the prosecutors in question "After about 10 minutes they left". Statement recorded as such, but followed by the question of the judge who wanted to know: "Did they talk to you?" And after the defendant answered briefly that no, the judge recorded: "Without talking to me. I mention that I knew one of the prosecutors".

But the same magistrate pretended not to hear when Baciu wanted to specify: "Mr. Colonel Voinea, who in fact also told me during the investigation in Bucharest, in fact". And in the end, although Ion Baciu insisted on the presence of prosecutor Dan Voinea at the "Cinderella" Crematorium on the morning of December 20, 1989, his name did not appear in the trial records. That's about it. What remains to be noted is the fact that the magistrate, who tried not to mention the name of prosecutor Dan Voinea, was the military judge, then Colonel of Justice Cornel Bădoiu"<sup>1</sup>. Contacted by phone, Gen. (r) Dan Voinea denied that, on December 20, 1989, he was at the " Ash "Crematorium to inquire about the dead cremated there. Instead, he told us something about the activity he carried out in

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<sup>1</sup> Cornel Bădoiu, who stubbornly refused to mention Dan Voinea's name as Ion Baciu spoke of him, also had a brilliant post-December career. A career whose more "delicate" moments were also talked about by Filip Teodorescu, who in December 1989 was the deputy director of the Romanian counterintelligence: "The president of the panel, col. Cornel Bădoiu, an intelligent man who managed to do relatively well, blaming the prosecution for all the errors and mistakes in the indictment that did not ensure the motivation of a sentence of our conviction, decided, in the summer of 1990, to return the case to the prosecutor's office for completion. Meanwhile, the military magistrate Cornel Bădoiu was promoted to the rank of general, president of the Military Section of the Supreme Court of Justice and in 2000 he became a lawyer.

the last days of 1989. He told us that, together with his colleague Mircea Levanovici, he participated in the capture of Postelnicu, whose first statements he took to accuse. Statements from which he allegedly found out about the 42 corpses cremated at the "Cinderella" Crematorium. Instead, Dan Voinea told us that the prosecutor who was actually at the crematorium was Gheorghe Diaconescu, the then head of the Military Prosecutor's Office, Deputy Prosecutor General of the RSR. Asked about the reason why Baciuc allegedly stated that he was also there, Dan Voinea told us that he has no way of knowing, but that it could be because he also investigated them, later, everyone involved in this dark business. General Dumitru Sorescu, also involved, which is true only in a collateral way, in the operative action regarding the transport and incineration of the people of Timisoara, also told us that he knows absolutely nothing about the presence of any prosecutor who came there. But his statement cannot be particularly conclusive: those who know him describe him as a man who preferred to bear all the consequences of that mission. Recently, the military prosecutors of the Military Prosecutor's Office of the Prosecutor's Office attached to the High Court of Cassation and Justice ordered the extension of the criminal investigation, in rem, for the crime against humanity. The prosecutors' findings are shocking and show the conspiracy against the Romanians that continues today: the damage to the physical and mental integrity, respectively the deprivation of liberty of a large number of persons, facts that are limited to the typical conditions of the crime against humanity prev. of art. 439 para. 1 lit. a, g, i and k Criminal Code with applying art. 5 Penal Code. The premise of the crime against humanity regarding the existence of a widespread attack results from the large number of localities where armed incidents took place with the consequences mentioned above. The manner in which this attack took place shows the existence of a plan according to which action was taken, a plan that aimed to create a state of confusion among the armed forces, by dividing the leadership of the Ministry of National Defense and disseminating false orders, reports and information. and the arming of the population, namely the creation of a "civil war" in which to confront armed units belonging to the Ministry of National Defense and the Ministry of Interior or the same ministry, in order to take power and legitimize the new leaders. In carrying out this plan, the Romanian Television was used to transmit alarmist and sometimes false communiqués, to cut the telephone connections and to bring to the leadership of the ministries of force former military personnel loyal to the new politico-military leadership, with the consequence of generating a psychological "war", which led to the deaths of many victims<sup>1</sup>.

So, from spring to November 2021, the military prosecutors exposed this plot that Dan Voinea, Cormel Bădoiu, Ilie Botoș and other communist military magistrates, the beneficiaries of huge pensions, hid. It seems absolutely unnatural

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<sup>1</sup> Vasile Surcel, *Chief of Militia: Dan Voinea personally checked at the crematorium the incineration of the stolen corpses from the Hospital from Timișoara*, <https://www.curentul.info/special>, (16.04.2022)

to me that this prosecutor directly involved in the events mentioned above is the one who self-investigated, as if we were in Kafka's or Orwell's novels, how to be impartial and claim immunity when you were directly involved !? Where is the truth, both historical and legal? Legal truth is at hand, overlapping with historical truth and collective memory. It takes courage and professionalism to take it on, otherwise we see how, in our eyes, the phenomenon of criminal law has created fertile ground for today's assassins of the Romanian people who can no longer revolt against those who lead them, as they did those of 32 years ago, but unfortunately we have replaced some criminals with others. What a shame!

The present text can be considered as a historical study, but also as an alarm signal, because the heroes who died for us in '89 were not treated fairly. For 32 years, they have been killed again every December. In the midst of memorials and pious wreaths, we forget, each time, that justice for martyred heroes' means punishing those who shot them. However, the revolutionaries and the military did not shoot each other "like fools", they were not just victims of "fratricidal fire"<sup>1</sup>. They were the last victims of the Ceausescu Security. In these pages we invite you to (re) examine the facts, as it results from the testimonies and documents. Some older ones, which were forgotten or covered by propaganda for the acquittal of former Securitate agents, others recently found in the CNSAS archives. You will probably have quite a few surprises in some cases. What are we after? We want justice for the victims. Justice in the legal sense is, we believe, the sine-qua-non condition of people's trust in the state, of our civil and peaceful coexistence, finally freed from the colds of dictatorship. The goal of justice is, after all, for a crime not to be repeated. As long as the assassin security guards are among us and dictate the way we understand our history, we will not be able to say that freedom and democracy have really won in Romania. Without (re) knowing and understanding that defining moment for the national consciousness, we do not believe that we can say, with our hands on our hearts that "we have been saved from fear". We hope that our judge, the reader of good faith, will see for himself in the pages of this paper that we want the truth to come to light. We want to believe that together the author and readers should be animated by the same feeling: the desire to bring the truth to light and to take a step towards rectifying a terrible injustice done to Romanians, coup after coup, genocide after genocide. A terrifying carousel of the victim-executioner binomial, they have so far searched the truth about the victimizing effect of law during the communist period.

## **Criminology of the law - profound alteration of Romanian law during the communist period**

### **3.1. Clarifying questions about the communist legal system**

Theoretically, the imperfection of the legislation is one of the conditions that create fertile ground for the development of crime, the idea generating the

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<sup>1</sup> *The indictment of April 5, 2019*, in the file 11/P/2014 of the Military Prosecutor's Office Section

hypothesis according to which the criminology of the law is concerned with the study of the interdependence between crime and legislation. But in the reference period we are not talking about the imperfection of the law which is human, but we are considering the state, with its three powers, as an enemy of the people, which is waging a fierce fight against the Romanian nation. Under these conditions, human rights and fundamental freedoms, the democratic society in which dignity and human values define the rule of law, have practically disappeared. Can such an undertaking guarantee mental balance, peace of mind, or self-confidence? Can he attain perfection? Can it fix people's complexes? Can it guarantee respect for human values in a state governed by the rule of law? Here are some of the questions that can arise from the desire of people to ensure their freedom and dignity! We researchers have some answers to these questions. Freedom and dignity are perceived differently by each of us. In my job, I work with the perception of freedom, with vulnerabilities and feelings of dignity. Not infrequently I have encountered cases in which freedom and dignity did not go beyond the realm of theory. Only when you are deprived of them, like the loss of the parents you have become accustomed to, waiting with love in your soul, on the doorstep of the house, do you realize their absence. As it happened in the gloomy period of Ana Pauker and their acolytes in Moscow when the entire Romanian judicial system was dislocated and made available to the allogeneic occupant, stuffed with enough Romanians, ax tails.

For the historians of the recent past, the study of the judicial system, though the institutional and legal ensemble in charge of distributing justice in the Romanian society represented a marginal preoccupation<sup>1</sup>. Only relatively recently did the first significant research on the judiciary appear, but systematic studies on this topic have not yet been conducted<sup>2</sup>. Numerous other small-scale research focuses on the judiciary in terms of its role in cracking down on "enemies of the regime"<sup>3</sup>. The dominant interest in historiography was given to the repressive

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<sup>1</sup> The concept of "judicial system" does not have a unanimously accepted definition. Traditionally, "power / authority" means all courts, civil and military. Another broader meaning includes the Public Ministry - although in most democratic systems criminal investigation bodies are part of the executive branch, under the coordination of the Minister of Justice. As far as we are concerned, for the period of the communist regime, by "judicial system" we mean not only the courts, the prosecutor's office and the lawyers, but also two other institutions involved in the "legal repression" of society: Security and Militia

<sup>2</sup> Florian Banu, *Judicial Bodies of the R.P.R./R.S.R., In Romania 1945-1989. Encyclopedia of the communist regime. Party, state, public and cooperative institutions*, coord. Dan Cătănuș, I.N.S.T., Bucharest, 2012, pp. 376-385; idem, *Procuratura R.P.R./R.S.R.*, in *ibidem*, pp. 491-497; Iuliu Crăcană, *Law in the service of power. Justice in the communist regime in Romania (1944-1958)*, I.N.S.T., Bucharest, 2015; Corneliu Pintilescu, *Military Justice and Political Repression in Communist Romania (1948-1956)*, Cluj University Press, Cluj-Napoca, 2012, p. 45

<sup>3</sup> Historians of law have also not conducted systematic research on the judiciary during the communist era. It is worth mentioning the synthesis of legal documents made by Sorin



phenomenon, being highlighted the responsibility of magistrates in political processes. The instruments for the application of the criminal policy (official or secret legislation, Security and Militia) or the forms and consequences of the application of punishments (the situation in the penitentiary system) were analyzed<sup>1</sup>. The overall assessment of the judiciary is lacking not only as a structure with an essential responsibility in repressive policies, but also in the regulation of civil disputes in Romanian society. The situation finds more explanation. The archives of the Ministry of Justice are not made available to historical research, and those of the penitentiaries are very difficult to access<sup>2</sup>. The essential information about the career of magistrates, contained in the so-called "professional maps" (staff files), is also prohibited at this time for research. Historians have had other sources available to study the judiciary: mainstream legislation, including secret legislation; political and administrative decisions taken by the Workers' Party/Romanian Communist Party; documents produced by the Security, respectively a good part of the political processes; press and other publications; memorial literature, etc.<sup>3</sup>. Another possible explanation can be found in the dynamics of the phenomenon of decommunization throughout Eastern Europe<sup>4</sup>. From the device of the so-called "transitional justice", in its radical form, lustration, the judicial system was missing. The ruling party of the totalitarian parties together with the secret service personnel, considered to be political politicians, was the central subject of the actions of "democratization through decommunization". The main assumption was that the justice system was under the direct control of the Communist Party, with magistrates being only a "passive tool" in the application of criminal policy, thus being exonerated from the stigma of "totalitarian collective guilt." The adaptation of the judiciary to the conditions of a democratic society, respectively the transformation of justice into a guarantor of democracy (by establishing the so-called "rule of law"), was achieved with priority by changing laws and multiple administrative reorganizations. Personnel in the judicial system of the old regime were not affected after 1989 by purges or exclusions for political reasons, under the argument that by establishing the hypothesis of collective guilt of the magistrates' body, new injustices would occur. The magistrates of the communist period were not subject to institutional

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Popescu, Dan Lupașcu, *The Romanian Judicial System. Collection of normative acts (1859-1989)*, Universul Juridic Publishing House, Bucharest, 2008, p. 64

<sup>1</sup> Florian Banu, *Instrumentalization of justice by the communist regime (1945-1958)*, "CNSAS Notebooks", no. 2, 2009, pp. 25-26

<sup>2</sup> The secrecy that dominated the leadership of the Ministry of Justice, regardless of the political orientation of the holder of the government portfolio, can be explained precisely by the "quiet transition" of magistrates from the communist to the democratic regime

<sup>3</sup> Florin Abraham, *Justice in Communist Romania: Between Political Control and Autonomy*, in the "Archives of Totalitarianism" no. 3-4 /2016, pp. 181-201

<sup>4</sup> For the issue of "transitional justice", Lavinia Stan, *Transitional Justice in Eastern Europe and the Former Soviet Union Reckoning with the Communist Past*, Routledge, London, 2009, p. 65

assessments of values and behavior to see if they were compatible with the rigors of democratic justice, as they were seen as adapting to democracy with society as a whole. In Romania, the "new justice" was built not only by new laws and legal institutions, but also by the massive granting, starting with 1994, of the immovability of incumbent judges, regardless of their activity during the communist period. Communist judges and prosecutors continued unabated after 1989, the only moral and legal barrier being collaborating with or belonging to the Securitate, and only if they violated fundamental rights and freedoms, and denounced activities and attitudes contrary to the communist regime, following a final court decision. Unlike magistrates, the parliamentary and governmental political elites of the democratic regime were overwhelmingly not recruited from the high communist nomenclature, but from its second echelon and from the newly arrived technocrats, or from the former Security officers<sup>1</sup>.

### **3.2. The dynamics of the Romanian communist judicial system between Stalinism and autochthonism**

After the fraudulent takeover of political power in March 1945, with the massive "help" of Russian tanks, in March 1945, the Communist Party of Romania was put in front of two options. The first option, which would have had negative consequences for its future, was to start the fight against landowners and capitalists from the beginning, which would have exposed the totalitarian principles, lacking PCR of adherents, allies and sympathizers, maneuvering table. The second scenario provided for the owners to be assured of demagogic promises and slogans, as well as short-term legislative initiatives, in order to reassure some of the bourgeoisie and give the peasantry a sense of security. The Romanian communists, as well as the Soviet ones, at the beginning of the functioning of the socialist state, chose the second option, proving that they had learned the lesson whispered from the interwar period and shouted and argued with the "mass punch" by the Soviet-imperialist state post-war stage. Communist leaders launched promises, disproving rumors of a possible collectivization, although the expropriation and socialization of the land had been announced in the party's program adopted at the founding congress of 1921, at the V Congress of December 1931, in various circulars, brochures and party newspapers from the interwar period<sup>2</sup>. Subsequently, the dynamics of the communist judicial system went through several stages, following closely the same periods as the entire communist regime, precisely as a result of the control exercised by the state party. There were only variations on the same theme; there was no degree of autonomy of justice in

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<sup>1</sup> Laurențiu Ștefan, *Who Governs Romania? Profiles of Romanian Political Elites before and after 1989*, Publishing House of the Institute of Political Science and International Relations, Bucharest, 2012, p. 48

<sup>2</sup> Cezar Avram, *Structures and social categories in the vision and action of the Romanian People's Justice*, in the Yearbook of the Institute of Socio-Human Research "C.S.Nicolăescu-Plopșor", pp. 76-90

relation to political power. In relation to the intensity and harshness of the communist repression, the concrete actions and the presence or absence from the leadership of the country of the Soviet occupiers, foreigners or Romanians, according to some opinions expressed in the literature, we propose a stage that can be improved. We point out, however, that the Marxist-Leninist view of justice remained unchanged from the beginning until the fall of the communist regime. However, the political transformations determined institutional changes in the judicial policy of the Romanian state during 1945-1989<sup>1</sup>.

Therefore, the evolution/involution of the judicial system has gone through several stages, marked both by elements of continuity and important changes. In the first stage (1945-1947), uncertainty prevailed in a geopolitical context marked by the stabilization and consolidation of the hegemony of the Soviet Union. The main events for the judiciary were the trials organized by the People's Tribunal for those considered to be "war criminals" or responsible for the "disaster of the country". Under the leadership of Lucrețiu Pătrășcanu, the Minister of Justice, the judiciary was prepared for its transformation from the roots in order to apply the dogmas of Marxist-Leninist ideology. This was done at the beginning of the second stage (1948-1967) when the model of Soviet justice was taken over in its entirety. Massive purges of magistrates and lawyers took place in order to break with "bourgeois justice", the prosecutor's office was replaced by the prosecutor's office, new criminal legislation was adopted, public and secret, some civil law institutions were transformed, mainly regarding the right of ownership. Security has become a criminal investigation body. Justice has obviously acquired class character by introducing popular assessors, who seconded the judges.

In the third stage (1968-1989) the political decision makers, Nicolae Ceaușescu mainly, tried to reconcile with the Romanian society, including through the apparent depoliticization of justice. The changes in the judiciary announced by the 1965 Constitution were followed by a new law on the organization of the judiciary, a new Criminal Code and criminal procedure. The new codes have eliminated much of the previous political offenses, and the procedural safeguards on respect for human rights have become stronger. The changes in criminal policy were the consequence of a new approach: control over society was achieved through the synergy between propaganda and preventive surveillance of society, less through custodial sentences. In the case of the two great periods between 1948 and 1989, other sub-stages can be identified, during which the political pressure on justice was more intense "(1948-1953; 1958-1960; after 1980)", but the dynamics of the system were determined. the framework organization laws (Law no. 341 of 5 December 1947; Decree no. 132 of 1 April 1949; Law no. 5 of 19 June 1952; law no. 58 of 27 December 1968) and the main criminal laws (The Criminal Code of 1948, which underwent numerous amendments until 1960; the Criminal Code of

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<sup>1</sup> Iuliu Crăcană, *Law in the service of power. Justice in the communist regime in Romania (1944-1958)*, National Institute for the Study of Totalitarianism (INST), Bucharest, 2015, p. 134

1968) and the Civil Code (Civil Code, Family Code, Labor Code). Another significant element that indicates that the history of the judiciary was not homogeneous during the communist period is the generational changes (in the biological and cultural sense). After the purges of magistrates and the inclusion in the legal system of persons with incomplete education, but with "proletarian conscience", since the early 1960s, among the magistrates came people with a more thorough legal training.

### **3.3. Communist justice versus bourgeois justice**

Justice, like any subsystem of society, contains at the same time both a positive and a negative potential for the destruction of the rule of law. It is true that the legal system characteristic of the rule of law tends towards the positive, while the one of totalitarian origin wears the gloomy, negative robe, as the Marxist Leninist ideology was defined by opposition to the liberal (contractual) theory of the state, developed in the eighteenth century. The theory of separation and mutual control of powers in the state was rejected because it was considered to reflect the domination of the "exploiting classes", and justice was only an instrument of class domination. From a Leninist perspective, power was unique, belonging to the proletariat, which was entitled to use even repressive means against "exploiters" (from the so-called "dictatorship of the proletariat"), in order to create society without ruling classes. The power of the proletariat was not subject to the censorship of any other power, being unlimited. This thesis is in clear contradiction with the liberal theory of the state, according to which, in order to avoid the tyranny of a power, it is necessary to separate the balance and the mutual control of the executive, the legislative and the judicial activity. While in liberal theory justice must be depoliticized, as a minimum guarantee of its impartiality, in the Marxist-Leninist view justice cannot exist outside the political phenomenon, even having the mission to apply the legislation necessary for the creation and functioning of communist society. Therefore, the condition of the magistrate is also different<sup>1</sup>.

If in the liberal theory and in the practice of democratic regimes the judge is given legal and real guarantees for the free and independent exercise of his profession, in the Leninist-Stalinist theory of justice, respectively in communist regimes, the judge is "independent", but the political power has extraordinary remedies available for the annulment of final decisions. The magistrate must not be outside partisan politics, as the liberal theory demands, but must be politically integrated into the state party, according to Marxism-Leninism. The judiciary was not considered a power, but only a function of the state, as well as the legislative and executive functions, all of which were subordinated to the will of the "revolutionary elite" institutionally coagulated in the Communist Party. Lenin summed up this view by stating that "the activity of the court is one of the sectors

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<sup>1</sup> Christoph Möllers, *The Three Branches: A Comparative Model of Separation of Powers*, Oxford University Press, 2013, p. 142

of state activity"<sup>1</sup>. Communist justice was conceived as an instrument of the communist party's will to defend the interests of the proletariat and the social and political order established by the totalitarian party. The judiciary could not censor the decisions of the Communist Party, in order to defend the rights and freedoms of its citizens or a wider public interest. In fact, the leadership of political activity by the nomenclature is not governed by laws, but only by internal clarifications of the Communist Party which do not fall within the jurisdiction of the judiciary. In this respect, the legislative sphere had concrete, criminal features, which determines the need for criminological research of this phenomenon and to take concrete measures for its prevention and annihilation. As we will see, in another section of the study, things happened in the same way after 1989, when the legislation was used by the allogeneic occult to destroy the Romanian economy. In this context, the role of magistrates was to interpret the laws and apply them to particular cases without having the power to create genuine case law. Although the Supreme Court had the power to standardize judicial practice, in reality similar or very similar cases received significantly different solutions, depending on the value of the judges and their possible influence on them.

In conclusion, in the absence of separation of powers in the state and by virtue of its political role played by the party, the politically dominated judiciary has made possible judgments in political order or in the interest of political power. The right of Bolshevik origin, foreign to our nation, was the docile tool of politics, and it was equally foreign, it removed our legal system. Therefore, in the newly created branch of law - criminology of law - should be analyzed as a determining factor of crime in its concrete forms; and the phenomenon of criminality of legislation (or legislative crime) to be understood as the capacity of the legislative activity to generate criminogenic and criminal laws. We will first see how the three constitutions adopted during the communist regime formed the basis of both criminogenic and criminal legislation. Let's take them one at a time.

### **3.4 The constitutions of the communist regime, the decisive factor of the criminogenic character of the law**

#### **3.4.1. The Romanian Constitution of 1948**

The criminogenic nature of the law means its ability to generate crime (or criminality). A law is criminogenic when by its provisions it contributes or favors the commission of crimes, unlike the criminal law which is, in its essence, a concrete instrument of committing the crime. Given the above, let us analyze how the Romanian Constitution of 1948<sup>2</sup> - a decisive and at the same time revealing

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<sup>1</sup> ME. Celtov, *The Soviet Criminal Trial*, State Publishing House for Economic and Legal Literature, Bucharest, 1954, p. 75

<sup>2</sup> At the meeting of April 13, 1948, the Grand National Assembly voted the Constitution of the Romanian People's Republic (Law no. 114/1948), with a unanimous vote of 401 votes. The Constitution was promulgated by Decree no. 729 of April 13, 1948 of the Provisional Presidium of the Romanian People's Republic, signed by the President of the Provisional

step in revealing the intentions of the communist party and state - was, by its norms, at the same time both criminogenic and criminal law, even if the act fundamentally enshrined the principle that "all power emanates from the people and belongs to the people, who exercise it through representative bodies elected by universal, equal, direct and secret ballot." The Constitution of the Romanian People's Republic, composed of 105 articles, grouped in 10 titles, contained important provisions relating to state law in guiding and planning the national economy, the existence of small property and private property, the revision of all existing codes and laws to be agreed with the provisions of the Constitution. Title II of the Constitution of 1948 - "Socio-economic structure", not found in the previous fundamental laws of Romania, indicates the existence of three categories of property: state property, property of cooperative organizations and property of individuals, individuals or legal entities (art. 5). Also, art. 6 stipulated that "the riches of any kind of subsoil, mining deposits, forests, waters, natural energy sources, railways, roads, water and sea, mail, telegraph, telephone and radio" belong to the state as common goods of the people", specifying that the modalities for transferring the above-mentioned goods to state ownership, which, at the date of entry into force of the Constitution, were in private ownership, were to be established by law. Private property and the right of inheritance were recognized and guaranteed by law, with private property "agonized by labor and saving" enjoying "special protection. According to art. 9, "the land belongs to those who work it", and "the state protects the peasant property from work", "encourages and supports the village co-operation", and for raising agriculture, "the state can create agricultural enterprises, state property". Like the previous constitutions, the 1948 Constitution provided for the possibility of expropriations "for reasons of public utility on the basis of a law and with a fair compensation established by the judiciary." Also, in order to achieve the legal basis for the nationalization of the main means of production, by constitutional means, it was provided that "when the general interest requires, the means of production, banks and insurance companies that are the private property of individuals or legal entities the property of the state, ie the property of the people, under the conditions provided by law "(art. 11)". As a result of these provisions, on June 11, 1948 the main industrial, mining, banking, insurance and transportation enterprises were nationalized, on July 2, 1948 the State Planning Committee was established, on March 3-5, 1949 it was decided The "socialist transformation of agriculture" on April 20, 1950, nationalized much of

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Presidium, CI Parhon, and the Secretary of the Provisional Presidium, GC Stere, countersigned by the President of the Council of Ministers, Dr. Petru Groza, and the Minister of Justice, Avram Bunaciu . It was published in the Official Gazette, part I, no. 87 bis of 13 April 1948 and entered into force on the same date. The 1948 Constitution was amended by Law no. 3/1952 regarding the modification of art. 61 of the Constitution of the Romanian People's Republic, published in the Official Gazette no. 16 of March 29, 1952. The Constitution of the Romanian People's Republic of 1948 was implicitly repealed on September 24, 1952, by the entry into force of the Constitution of 1952

the buildings and housing, and on January 20, 1952, a new monetary reform was made to confiscate the last cash reserves of the population. Subsequently, in order to consolidate the democratic-popular power and set the objectives of total liquidation of the contradiction between the socialist character of the state power and the character of the production relations based on private property, the Constitution of 1952<sup>1</sup> was adopted, the second of the three constitutions of Romania the communist regime.

#### 3.4.2. The Constitution of the Romanian People's Republic of 1952

The 1952 constitution consisted of an introductory chapter and 105 articles grouped into 10 chapters. In the introductory chapter, the Constitution proclaims Romania a "state of the working people in towns and villages." The Romanian People's Republic, as shown below, "was born out of the Soviet Union's historic victory over German fascism and the liberation of Romania by the glorious Soviet Army, a liberation that empowered the working people, led by the working class led by The Communist Party, to overthrow the fascist dictatorship, to destroy the power of the exploiting classes and to forge the state of popular democracy, which fully corresponds to the interests and aspirations of the popular masses in Romania. "The creation and strengthening of the People's Democratic State , "friendship and alliance with the great Soviet Union" were meant "to ensure the independence, state sovereignty, development and flourishing of the Romanian People's Republic." Foreign policy "is a policy of peace, friendship and alliance with the USSR." As a state regime, the Constitution proclaims the regime of popular democracy, which "represents the power of the working people." The People's Democratic State is a form of the dictatorship of the proletariat, exercised by the working class party. the cultural-educational one. Based on these new constitutional provisions, the new socialist system of state bodies was created, and the replacement of the existing state apparatus with a new one was achieved through amendments to the laws on judicial organization and the organization and functioning of the Prosecutor's Office.

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<sup>1</sup> The Constitution of the Romanian People's Republic of 1952 was adopted by the Grand National Assembly on the basis of Articles 38 and 104 of the Constitution of the Romanian People's Republic of 1948 after discussing the draft published on July 19, 1952 by the Constitutional Commission for the preparation of the draft Constitution. The Grand National Assembly voted the constitution in the meeting of September 24, 1952, unanimously by 324 votes, a situation certified by the President of the Grand National Assembly, Coliu Dumitru, and the secretaries of the Grand National Assembly, Marussi Gheorghe and Belea Miron. dated September 24, 1952, under the signature of the President of the Presidium of the Grand National Assembly, Dr. Petru Groza, and the Secretary of the Presidium of the Grand National Assembly, Marin Florea Ionescu, and was published in the "Official Bulletin of the Grand National Assembly of the Romanian People's Republic" no. 1 of September 27, 1952. The Constitution entered into force on September 24, 1952, that is, on the date of its adoption. It implicitly repealed the 1948 Constitution at the same time

For the investigation of the victimizing effect of the law, we will distinguish between the criminogenic character of the Constitution, as a normative act and of the infra-constitutional legislation. A legal norm can be recognized as criminogenic when it generates criminogenic factors (legal, economic and other), which determine either the commission of crimes or the increase of the level of crime within the limits of the relations it regulates. And here we have in mind the legislation adopted between 1948-1953 which was the legal support of nationalization and collectivization and highlighted the objectives of the policy of the party and the communist state because, from 1945 to 1948, Romania had gone through the stages preceding major communist reforms. After the abdication of King Mihai, the proclamation of the Romanian People's Republic and the implementation of some reforms - agrarian and monetary -, in the middle of 1948 it was the turn of nationalization. If until then all the things done by the communists had a precedent, nationalization was the first concrete act towards another era, radically different from everything the Romanians had experienced until then because since the National Conference of the PCR in October 1945, the communists opened the fight against private property of any kind in the economy. After the nationalization of the National Bank of Romania was carried out in December 1946, state control over all credit institutions became effective. As early as July 1947, the Ministerial Commission for Economic Recovery was created, with the aim of controlling raw materials, production and sales of products. The nationalization of enterprises was the end of a whole process. From October 1947, the private, industrial, commercial and transport enterprises were inventoried. A Superior Nationalization Commission was set up simultaneously with the county and collective commissions for each enterprise and the Plenary CC of the PMR, from June 9-11, 1948 adopted the Report, presented by Gheorghe Gheorghiu Dej, on the nationalization of "industrial, banking, insurance enterprises, mining and transport"<sup>1</sup>.

By the law of nationalization of June 11, 1948, all industrial, banking, mining or transport associations, as well as real estate owned by citizens became the property of the state without any compensation for the owner. Thus, thousands of buildings and mansions became the residences of trusted people of the Communist Party or the headquarters of CAPs and cultural centers. The Soviet-style plan was secretly implemented by Gheorghe Gheorghiu Dej, who headed the Ministry of National Economy. The development of the economy was just a pretext. However, the measure was political in nature and fully targeted the old political and intellectual elite; a vague text, based on which more than 9,000 houses were nationalized in the Capital alone. A text that operates with labels that is difficult to control. Who decided, and especially on what basis, whether or not you were an exploiter or an element of the big bourgeoisie? Subsequently, the process continued in the agricultural field through collectivization, in order to remove

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<sup>1</sup> Gheorghe Gheorghiu-Dej, *Articles and speeches, December 1959 – May 1961*, Bucharest, Politică Publishing House, 1959, p. 153



exactly the same social layer, but from the rural world. However, the measures were not taken at the same time because, no matter how many precautions the rulers took, there was a possibility of a revolt. The principle applied was divide et impera. After the regime got rid of the big industrialists, whom it sent to prison, the "war" against the scoundrels started the following year. The collectivization of Romania - an occasion for crimes, torture, arrests and deportations - was the civil war that destroyed the Romanian peasant. It was called "collectivization" but, in fact, it was a huge kidnapping committed by the totalitarian regime brought to Romania on the "liberating" tanks coming from Moscow, after August 23, 1944. From 1949 until 1962, peasant after peasant he was forced to cede his property to a state that would rob him not only of his possessions but also of his dignity. The Romanian peasants were not afraid of the association, but of the model they already knew: most of them had been soldiers on the Soviet front, in the Second World War, and they had seen with their own eyes the drama of the "culacul", of the collectivized peasant, by force in the USSR. How it got here is clear, political, but also legal, by putting the right in the service of power by profoundly altering the positive effect of the entire legal system and marking the criminogenic nature of the legislation / law / legal norm whose features may express legal defects such as: recognition discretion for law enforcement subjects, the possibility of equivocal and narrow interpretation of the legal norm, gaps in the normative act that may generate legal collisions and, most seriously, non-regulation of legal liability for violation of various legal norms, or otherwise subject to the declaratory it still happens today with magistrates who are not responsible for judicial errors committed. All these characteristics are found in almost all the laws issued during the communist period.

For the agrarian policy from 1945-1953, the political trigger was the Plenary of March 3-5, 1949 which started the collectivization campaign. In his report, Dej spoke of the existence of collective households, which had been formed by the "free will" of the peasants, their desire to follow the "example of the Soviet Union." At the time of this plenary, the coordinates of the socialist agricultural sector had already been established. By Decree no. 82/1949 confiscated all properties of 50 ha and over, left over from the agrarian reform of March 1945. The decree was contained in the following wording of the PMR leader, also in the Plenary of 3-5 March 1949: complete liquidation of the remains of the estates". Following the political decision, both external and internal, the legal support consisted of a series of normative acts (over 200 laws, decrees, decisions of the Council of Ministers, ministerial decisions, journals of the Council of Ministers, decisions of the Commission economic recovery and monetary stabilization, decisions of the General Confederation of Labor) with an organizational character regarding the functioning of the Ministry of Agriculture, mutual aid groups, simple annual associations, TOZs<sup>1</sup>, GACs, GAS, SMT- on the role of agricultural unions,

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<sup>1</sup> The TOZs taken over from the Soviets were companions that did not disappear after each agricultural campaign, but gradually developed into a collective farm

party organizations, youth organizations, women's organizations, the People's Councils and the State in general, the amount of investments and endowments, etc. Some of these legal acts were of great importance, because their application brought essential changes in the social structure, in the structure of property, in the structure of production, in the life of the Romanian village. A feature of these packages of laws and decrees was that they legislated something that had already been done. The Romanian communists applied the "technique of the accomplished fact". Many laws and decrees, instead of prefabricating and creating the legal framework necessary for the deeds, were enacted after a few months, when the object of the law was already working. Decree no. 33/22 May 1948, which established the Administration of State Farms and Car Stations, meant, in fact, only a change of title, as since 1945 state farms and agricultural car rental stations have been established, and by Decree - law no. 939/27 November 1946, the Autonomous Directorate of Agricultural, Animal Husbandry, Agricultural Industries and Machinery was established by merging state farms with agricultural machinery rental centers<sup>1</sup>. On July 2, 1948, by Decree no. 119, the State Planning Commission was established, in order to draw up the "general plan of the national commission". This Commission took over the attributions of the Superior Council of the National Economy, which had been established on November 26, 1945 under the presidency of Gh. Gheorghe-Dej. The state's control over the agricultural activity in the villages, existing since the end of 1945, was thus recognized, the economic super centralization becoming a principle of the Romanian communist policy taken over with the entire packaging from the enemy from the east. And so, the communist law, the one with criminogenic valences, was put in the service of power.

#### 3.4.3. The Constitution of 1965

The communist constitutional triad ended with the Constitution of 1965, which ended its public coup after the 1989 coup. It was the last communist constitution to be part of the second phase of the evolution and course of the communist regime in Romania. it produces an ideological, political and intellectual "thaw", followed by a period of relative "liberalization" of the regime, when it was hoped even for an "opening" of the regime to democracy, which will prove to be a vain illusion. During this period, despite the appearance of liberalization of the regime, the all-encompassing control of the party and the socialist state extended to all public institutions, trade unions and public organizations, schools, universities, mass media, free movement of persons and contacts with foreign countries. Of the three Constitutions that Romania had until December 89, the one of 1965 lasted the longest in the life of society, being used by the communist regime both to create the illusion of a relaxed, open regime and as an instrument of control. of the population.

The constitution adopted on August 21, 1965, was no longer the product of Soviet pressure, but a paradoxical one, by its very content. On the one hand, it

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<sup>1</sup> C. Avram, *Op. cit.*, p. 82.

contained provisions that created the image of liberalization, a relaxation of the regime, and on the other hand it established the monopoly of the Romanian Communist Party. "An overall analysis of the text is surprising by the paradox it illustrates: on the one hand, many provisions try to describe another side of the regime, more relaxed, more legalistic and less revolutionary, and on the other hand, the inflexibility of the principles basic, taken from the 1952 Constitution, call into question the reformist character of the document. Compared to other countries in the communist bloc, the reform is extremely limited and the mono-organizational character of the society remains untouched"<sup>1</sup>. Conceptually, the Constitution of 1965 - a constitution of victorious socialism - returned to the organization of the text into titles, giving up the "chapters" of Soviet inspiration, specific to the Constitution of 1952. The Basic Law of 1965 contained 9 titles and 121 articles systematized as follows: Title I - Socialist Republic of Romania (art. 1-16); Title II - Fundamental rights and duties of citizens (art. 17-41); Title III-Supreme bodies of state power (art. 42-76); Title IV - Central bodies of the state administration (art. 77-85); Title V - Local bodies of state power and local bodies of state administration (art. 86-100); Title VI - Judicial bodies (art. 101-111); Title VII - Prosecution bodies (art. 112-115); Title VIII-Signs of the Socialist Republic of Romania (art. 116-119) and Title IX-Final provisions (art. 120 and art. 121). The Constitution of 1965 changed the name of the Romanian State from the Romanian People's Republic to the Socialist Republic of Romania. As in all socialist states and in Romania, the issue of relations between the party and the State was raised, especially since art. 3 states: "In the R.S.R., the leading political force of the whole society is the P.C.R." Under the leadership of the PCR in Romania, the dictatorship of the proletariat was established, the economy was established in the economy, civil society was altered by the dictatorial principles of the PCR, and censorship inhibited freedom of expression. With regard to the judiciary and the prosecutor's office, there are no substantial changes in relation to the provisions of the previous Constitution. A coalition of Western powers, neighbors and especially the U.R.S.S. in full reorganization but also superimposed on the deep dissatisfaction of the Romanian people with the dictatorial political regime led to the overthrow of Ceausescu on December 22, 1989. At that time all power in the state was taken over by the Council of the National Salvation Front. On December 25, 1989, former head of state Nicolae Ceausescu and his wife were shot dead after a hastily organized trial led by the newly formed power in Bucharest. The Constitution was massively amended following the coup in 1989 and came into full force in 1991. The three Constitutions (1948, 1952 and 1965) are the effect of the establishment of the totalitarian communist regime in Romania, the first two being made according to the Soviet model. Stalinist. The period 1948–1964 was characterized by harsh measures such as the elimination and even physical extermination of the civil society elite, doubled by an action to

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<sup>1</sup> Gheorghe Sbărnă, *The Constitutions of Romania*, Cetatea de Scaun, Târgoviște, 2012, p. 98

dismantle the old historical parties, and later to abolish them and take power by the communists, in the conditions of the Soviet interferences, which established in Romania a Marxist of modernization and development of the country, having as main pillar the forced industrialization, the "cooperativization" of agriculture and the socialist transformation of education, science and culture. At the same time, in order to introduce total control over the individuals, the police terror was intensified, by establishing institutions of force and intimidation, in order to repress any movements of dissent and resistance and to introduce a climate of terror and personal insecurity among individuals. "By abdicating the traditions of parliamentary democracy, the socialist constitutions represented the legal form of subordinating society (including the state) to the will of a single political force, represented by the Communist Party, raising the absolute monopoly of the decision of a single political party to from constitutional practice a ritual of the dictatorial manifestations of the communist rulers". In conclusion, the experience of communism for Romanians was traumatic. In economics it has replaced entrepreneurship with centralized control; in politics and social life he drowned civil society in institutions without integrity; in the intellectual life it has suffocated the free expression of the human spirit, and most seriously, it has caused incalculable damage to the collective morality by the proliferation of laws but the contempt for the law"<sup>1</sup>. About the situation of Romanian`s law in the service of power, in the second part of our study, in the next issue of the magazine.

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