TRANSITIONAL JUSTICE IN POST-COMMUNIST ROMANIA
RESEARCH PROJECT

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Research objectives

Since the end of the Second World War, all societies which directed their steps towards democracy have tried to solve, one way or another, the issues regarding their authoritative past and to identify the persons responsible for the abuses and the crimes perpetrated under the respective regime. However, in all countries where the violent measures enforced by the state made numerous victims and where the persons responsible for the abuses were also numerous and usually held leadership positions, thus securing a certain degree of “legitimacy”, the exercise of post-dictatorial justice became an extremely difficult one, considering it was interpreted whether as an enforcement of the condemnations established by the courts of law or as a means of history re-writing, based on the consequences of these trials. Therefore, a series of paradoxical questions came to the researchers’ attention, namely: How can one punish a large category of the national community, without creating a climate of hate and animosity between the various social groups within the respective community? How can one declare the illegitimacy of a state, when the continuity of its administrative and security apparatuses condition, as it seems, the survival of the political community? How can one punish the guilty when, in most cases, the separation of the former elites from state institutions and their voluntary withdrawal from public life do not normally happen? How can one pronounce on the criminal nature of a regime when this means that justice must decide on the degree of guilt of an institution of which it was a part? Last but not least, taking into account that the task of democratic governments is to inspire citizens with respect for the lawful state and for the letter of the law, another issue arises: What kind of punishment policies can one choose, so that one can meet the victims’ requests without violating human rights and the principles of the lawful state?
When confronted with solving these issues, justice often faces the impossibility of offering completely satisfactory answers. “There is no perfectly fair solution to this problem” – researchers conclude. In this context, the present study aims to analyze the policies of transitional justice in post-communist Romania and to identify the difficulties encountered by their initiators between 1990 and 2006. We will attempt to answer the following questions: Which specific factors determined the choice of the strategies that were chosen in order to administrate our reference to the past? Who were the main players that initiated or opposed these strategies? How did these strategies evolve? Did they fulfill both their punitive and history re-writing purposes?

The Study Structure

In the aftermath of 1989, several punitive strategies against the persons responsible for the crimes and the abuses perpetrated during the former dictatorial regime were adopted in Romania. These strategies were adopted as it follows: firstly, there were the criminal trials, which took place within the Courts of Law of Romania; secondly, the screening laws, which made public lists of persons who collaborated with the political police of the regime, without taking, however, any punitive measures against these persons; thirdly, the attempts to adopt a lustration law, by means of which to forbid some of the politicians, the officials and the military of the former regime to candidate or to be nominated for public offices in the aftermath of 1989. These strategies will be analyzed by comparison with those implemented in other countries of the former Soviet block.

Within the study, Raluca Ursachi will also make a comparative analysis of the various strategies adopted in the field of transitional justice immediately after the Second World War and until the establishment of democracy in Eastern Europe. The three main transitional waves which came after 1945 will be discussed upon as well, considering the following study cases: Post-Nazi Germany; Southern Europe, namely Spain, Greece and Portugal; South America, namely Argentina, Chile, Bolivia and Uruguay; South Africa; Eastern Europe; Eastern Germany; Czechoslovakia; Poland; Hungary; The Baltic Countries.
Stejărel Olaru will examine the various legislative initiatives proposed in order to create a lustration-favorable climate in post-communist Romania, taking into account all related political, historical and legal issues and focusing on the analysis of the factors which hampered this law from being adopted. Furthermore, Stejărel Olaru will examine the context in which the National Council for Studying the Securitate Archives (CNSAS) was set up, the evolution of the legislative projects which grounded its establishment and functioning as well as the factors which prompted the institutional semi-failure of the Council, considering the three main competences which the Council was meant to undertake, according to its establishment law, that is, disclosing the former Securitate, facilitating access to personal files and writing historical studies and analyses.

Taking up the analysis of the penal trials referring to the persons who are responsible for the crimes perpetrated by the communist repressive apparatus in Romania, Raluca Grosescu will attempt to answer two major questions within the third part of the study. To what extent did these trials succeed in fulfilling their punitive task and in offering a coherent image of the communist repression in Romania? To what degree did these trials help establish respect for law, considering they took place after the fall of a regime which systematically violated legitimacy? The study will consist of two parts. The first part will outline the conceptual frame of the difficulties and the advantages of penal approach as a fundamental element of transitional justice. The second part of the study will focus on the trials entered against former politicians, military men and Securitate officers who are responsible for the abuses, crimes and infringements of human rights they perpetrated before 1989. All these trials will be scrutinized, starting with the trial of Ceauşescu and ending with the “Autobuzul” and Gheorghe Ursu trials.

Methodology and Resources

The first part of the study will primarily rely on synthesizing and interpreting the secondary sources, that is, specialized books and articles which analyze the issues under discussion since Nuremberg until present day. It is important to mention that these materials have not been translated into Romanian yet.
The evaluation of lustration policies will employ the qualitative analysis towards the interpretation of the following types of sources: texts of legislative drafts, Parliamentary debates, authorizations given to these texts by the Government and the Legislative Council, semi-directed interviews with politicians and representatives of the civil society, articles of the post-communist press. The same sources will be employed as well towards the analysis of the functioning of the National Council for Studying the Securitate Archives (CNSAS). In addition to the above-mentioned sources, the activity reports of the Council and the public speeches delivered by the members of the Council will be taken into account. The interpretation of the political context and of its effects on various lustration projects or initiatives amending the functioning of the CNSAS will constitute an important part within the paper. Secondary sources, such as specialized books and articles, will also be used.

The evaluation of the role played by the penal trials brought against the former communist dignitaries in the aftermath of 1989 will be based on the qualitative analysis of the documents presented during these trials, that is, indictments, sentences, appeals, as well as on the qualitative analysis of the semi-directed interviews given by law experts such as defense lawyers, prosecutors and judges who were involved in these trials, by the accused, the damaged parties and the politicians. Post-communist press represents, as well, another important resource towards the accomplishment of this study. Secondary sources such as specialized books and articles will also be employed in order to structure and write the theoretical part of the study, which focuses on penal trials as fundamental elements of transitional justice.

**Work Stages and Estimated Deadlines**

1. Drawing up the study regarding the history of transitional justice policies since Nuremberg until the establishment of democracy in Eastern Europe – October 2006 - 31 January 2007
2. Collecting the documents referring to lustration policies, the functioning of the CNSAS and the penal trials brought against the former communist dignitaries – October 2006 - 31 January 2007
3. Reading of relevant press articles – 1-28 February 2007
6. Writing of the studies proper – April - May 2007
1. Final report – June 2007