Subordinating Justice in Communist Romania: The Sovietization of the Romanian Criminal Justice System (1945-1953)

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ABSTRACT

In this thesis I address the judicial and legal systems of Romania from 1945 to 1953 within the context of the communist tack-over of Sovietization of Romania. More precisely, I discuss the arrangement of the judiciary and several amendments brought to criminal legislation (Penal Code). I argue that during the period under my focus Soviet-type judicial institutions, legal concepts, and practices were transplanted to Romania at different stages. I also argue that beginning in 1948, when a Soviet-type constitution and a new penal code came into effect, the communist government of Romania gave political repression, to a certain extent a legal dimension. Accordingly, my aim is to demonstrate that the repressive nature of the regime was upheld by the ideological interpretation of criminal law.

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Introduction

In 2006, the Romanian presidency established The Commission for the Analysis of the Communist Dictatorship in Romania. In over eight hundred pages, this Commission prepared a *Final Report* on the communist system in Romania, analytical research into the Party apparatus and the institutional structures of the Party-state.[1] Based on this *Report*, the head of the Romanian state officially endorsed the Romanian communist regime as a totalitarian regime imposed by foreign dictate.[2]

The Commission emphasized that the communist dictatorship in Romania was the result of the actions of a limited group of individuals who used the communist ideology for justifying the new regime's assaults against civil society and political pluralism.[3] At the end of World War II, with support from the Soviet occupation army, the Party began to assert its political supremacy by intimidating, humiliating, and repressing any potential opposition. Two stages of this period can be differentiated: the take-over (starting in 1945) and the consolidation of the communist regime (starting in 1948). Referring to the peaks of repression within this time frame, the authors of the report identified two main periods: the first from 1948 to 1953 and the second from 1958 to 1961. The former

[1] *The Final Report of the Presidential Commission for the Analysis of Communist Dictatorship in Romania* (Bucureşti: Humanitas, 2007). See also: http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf (accessed January 2011).

[2] *The Speech given by the President of Romania, T. Băsescu, on the occasion of the Presentation of the Report by the Presidential Commission for the Analysis of Communist Dictatorship in Romania* [during a joint sesson of the Romanian Parliament, 18 December 2006], http://www.presidency.ro/pdf/date/8288_en.pdf (accessed January 2011). During his speech, the Romanian President officially "condemned" the Romanian communist regime as "illegitimate and criminal". It is important to mention that the subject of this "condemnation" was the institutional apparatus, which upheld the functioning of communist regime in Romania, and not the great mass of Party members. Although this "condemnation" was the result of the work of the Commission, the Report itself has no juridical value. Moreover, it stands as a moral judgment of the past because it emphasizes the Romanian society's need of coming to terms with its communist history.

[3] *The Speech given by the President of Romania, T. Băsescu*, http://www.presidency.ro/pdf/date/8288_en.pdf. (accessed January 2011).

coincided with the initiation of the Stalinization process in Romania and the latter was a consequence of the de-Stalinization campaign launched in Europe in 1956.

As a totalitarian regime, the Romanian communist regime carried out its repressive politics through assassinations, deportations, prison and forced labor sentences, and marginalization of undesirable individuals and social groups. Consequently, the lives of hundred of thousand of people were directly affected and state institutions were discredited and compromised because of their subordination to Party's ideology and goals. The transformation of the judicial and legal frameworks into efficient instruments of repression is a relevant example of how the Party utilized state institutions for achieving its ideological interests.

In this thesis, I will address the judicial and legal frameworks of Romania from 1945 to 1953. Moreover, I will focus on two complementary lines: the arrangement of the judiciary and amendments brought to criminal legislation (Penal Code). I will approach these issues within the context of the communist take-over and Sovietization of Romania. Focusing especially on the latter, I will argue that beginning in 1948, when a Soviet type constitution and a new Penal Code came into effect, the regime gave political repression, to a certain extent, a legal dimension. Accordingly, in this thesis I will scrutinize the legality of the criminal justice administration. I also aim to demonstrate that the ideological interpretation of criminal laws and not the content of those laws upheld the repressive function of the regime. In order to demonstrate this I will analyze the process through which "acts of plotting against the social order" were criminalized and brought before a military tribunal. My selection of a military court is not random since starting in 1948 only these institutions could judge the "enemies of the regime". However, the

military tribunal I focus on this thesis has no particular relevance for my research. I selected it without an identifiable pattern or agenda.

It is important to mention that several actors were involved in the process of legalizing political repression. On the one hand, there were institutional actors such as the *Securitate*,[4] the Prosecutor's office, the bar, and the courts. On the other hand, there were the accused, the witnesses, and the informants. Be it the *Securitate*, the Prosecutor's office, or the court, these institutions issued documents which are essential for understanding the repressive function of the regime. It is important to mention that, depending of the tasks of the institution that created it, these are documents of various genres. Despite their relevance for understanding the repressive function of the regime, the researcher who aims to write about the "judicialization" of political repression must be aware that, as historical sources, investigatory reports and court sentences require different approaches. Interrogatory records, as emphasized by individuals who were subject to inquiries conducted by the *Securitate*, could reflect a fabricated guilt, which the accused confessed under physical and psychological pressure.[5] Consequently, in the majority of cases, the extent to which an interrogatory record reflects the dimensions of a real offense is impossible to establish, at least without comparing it to another historical source or an oral testimony. However, court sentences stand as sources which are more approachable for reconstructing the process through which the regime legalized repression. This is because in the texts of court sentences one can see how ordinary offenses were ideologically interpreted in order to reflect a political aim.

[4] The Romanian term for the Department of State Security, the secret service (secret police) of communist Romania established on August 1948.

[5] This happened especially when the objective side of the crime was inexistent. In this context, the only way to prove the guilt of the accused was to make him admit or confess his criminal intentions or acts using persuasive methods.

Due to time and space considerations, and the complexity of an approach monitoring both interrogatory records and court sentences, in this thesis I focus only on the latter. Therefore, I disregard the process through which the *Securitate* collected evidence in order to build a case.

The topic of this thesis can be integrated into the larger framework of administration of criminal justice and political trials in communist Romania. Unfortunately, in present scholarship Western scholars considerably neglect these topics. Although the two-volume book on the expansion of Soviet jurisprudence in the Eastern Europe following World War II, edited by Vladimir Gsovski and Kazimierz Grzybowski addressed the case of Romania, one must emphasize that it was published in 1959.[6] A more recent contribution is the book authored by Dennis Deletant, *Communist Terror in Romania: Gheorghiu-Dej and the Police State, 1948-1965*. An inquiry into the early years of communist rule in Romanian, Deletant's book emphasizes the use of terror as the primary means of eliminating the newly established regime's opponents. Deletant addresses the Soviet origin of Romanian communist political trials and illustrates that some of their aspects, for example the emphasis on the social background of the accused, were unknown to the Romanian judicial system prior to 1945. Deletant's approach to the events of 1945, when more that 1000 magistrates were dismissed in order to make way for individuals loyal to the communist regime, is essential for understanding the complexity of the judicial transformations during the early communist rule in Romania.

In Romania, scholars have approached the topic of administration of criminal justice during the communist rule in a series of articles or book chapters published under

[6] Vladimir Gsovski and Kazimierz Grzybowski eds., *Government, Law and Courts in the Soviet Union and Eastern Europe* (New York: Frederick A. Praeger, 1959).

the auspices of the Institute for the Investigation of Communist Crimes in Romania.[7] Marius Oprea's research on the first two decades of activity of the *Securitate* included important information about the legislation used to repress the "enemies of the regime".[8] However, because the focus of the research is the activity of the political police in communist Romania, the book does not address other actors involved in the process of administrating "justice".

The highly propagandized "reform of justice" carried out by the Romanian communist government is the topic of an article published by Ramona Coman in a collection of eight studies which addressed different "public policies" in communist Romania.[9] Given the complexity of the jurisprudential innovations implemented by communists, Coman approached this topic by focusing on the main institutional reforms that defined the structure of the Romanian judiciary. Moreover, Coman referred to the 1947, 1948, 1952, and 1968 laws in the re-organization of the judicial system. The author emphasized that each of these laws reflected the stages through which the regime established its reign. Coman succeeded in showing that the re-organization of the judiciary as a carefully planned process of social engineering by recounting in chronological order not only the laws and decrees that implemented this policy, but also their ideological significance. Nevertheless, Coman's article failed to discuss the transformation of criminal law.

[7] Founded in 2009, IICCR is an institution which aim is to "analyze the nature, the purposes, and the effects of the totalitarian regime in Romania, as well as its consequences". http://www.crimelecomunismului.ro/en/about_iiccr/institute. (accessed January 2011).

[8] Marius Oprea, *Bastionul Cruzimii. O istorie a Securităţii* (1948-1964) [Fortifications of cruelty. A history of the Securitate (1948-1963)], (Iaşi: Polirom, 2008).

[9] Ramona Coman, "Ipostaze ale comunismului românesc. Despre crearea şi funcţiile instituţiei judiciare" [Stages of the Romanian communist regime. About the creation and the purposes of the judicial system] in *"Transformarea Socialistă" Politici ale regimului comunist între ideologie şi administraţie* ["The Socialist Transformation". Politics of the communist regime between ideology and administration], ed. Ruxandra Ivan (Iaşi: Polirom, 2009).

Concerning the Romanian scholarship on political trials, one has to mention that researchers have focused mainly on the highly propagandized show trials. Using archival sources, oral sources and newspapers articles, Doina Jela focused on the Danube-Black Sea Canal show trial (1952).[10] Written as a literary work, this book presents the story of one of the seven individuals who received the death sentence in the 1952 trial. While constructing its narrative, the author succeeded in depicting the atmosphere surrounding the trial, especially the efforts that communist authorities took in making this case a statement of the regime's intolerance toward criticism.

Stelian Tănase wrote an impressive volume which offers a comprehensive image of the last Stalinist-style show trial held in Romania.[11] Tănase's focus is not only on the trial itself, but he also emphasizes the international and national political contexts of the time as factors which determined its course. Moreover, the author contextualized this trial within Romanian communist government's repressive politics which followed the 1956 events in Hungary and the 1958 retreat of Soviet troops from Romania.

Lavinia Betea's contribution to the historiography of this topic must also be mentioned because the author addressed political trials as both specific and general topics. Moreover, in her book *Lucreţiu Pătrăşcanu. Moartea unui lider comunist*[12], Betea assessed the political dimension of a major show trial conducted in communist Romania: the trial of L. Pătrăşcanu, the first communist minister of justice. In accordance with the

[10] Doina Jela, *Cazul Nichita Dumitru. Încercare de reconstituire a unui proces comunist. 29 august-1 septembrie 1952* [Nichita Dumitru case. Attempt of reconstructing a communist trial. August 29-September 1st], (Bucureşti: Editura Humanitas, 1995).

[11] Stelian Tănase, *Anatomia mistificării: Procesul Noica-Pillat* [Anatomy of mystification. The Noica-Pillat trial] (Bucureşti: Editura Humanitas, 1997). The Noica-Pillat trial was a show trial held in 1960. The accused were the philosopher Constantin Noica and the poet Dinu Pillat, and other Romanian intellectuals, in fact the last representatives of the interwar Romanian intellectual life.

[12] Lavinia Betea, *Lucreţiu Pătrăşcanu. Moartea unui lider comunist* [Lucreţiu Pătrăşcanu. The death of a communist leader] (Bucuresti: Editura Humanitas, 2001).

archival sources consulted, the author concluded that this trial was conducted under the direct supervision of the Soviet advisors sent to Romania after 1944. Although focused on a single case study, Betea's volume questions the Romanian judiciary's degree of autonomy from political/ideological interferences. *Psihologie politică. Individ, lider, mulţime în regimul communist*[13], another important study written by Betea, approaches the various dimensions of the communist propaganda apparatus and examines political trials on a general level. In this context, Betea defined political trials as essential means for the imposition and the survival of the communist dictatorship, because through these types of actions the ruler exonerated himself of any wrongdoing by designating scapegoats for various social problems.

At present, Romanian scholarship on communist political trials as a means through which the regime organized, legalized, and exercised its repressiveness lacks therefore an approach which focused on mass trials. These trials were not show trials and therefore did not "enjoy" the attention of the propaganda apparatus and because of this remained unknown to the larger public. In this thesis, I address such trials within the argument of the Sovietization of the Romanian judicial and legal framework.

Political repression carried out through judicial mechanisms during the period which I am focused on meant new developments as compared with the pre-communist period. Notwithstanding that political repression was not unknown to previous regimes (the Carlist and Antonescian dictatorships)[14], I emphasize that the communist regime brought significant changes. Therefore, the argument of my thesis develops along two

[13] Lavinia Betea, *Psihologie politică. Individ, lider, mulţime în regimul communist* [Political psychology. Individual, leader, crowd in the communist regime] (Iaşi: Editura Polirom, 2001).
[14] From February 1938 to September 1940, Romania was a monarchical dictatorship under the personal rule of King Carol II. During World War II, from 1940 to 1944, Romania was an authoritarian state under the command of marshal I. Antonescu.

primary research lines; since I approach the judicial and legal framework of political repression in communist Romania by arguing for its Soviet origin and by analyzing it as a tool of political repression.

This thesis is based on a series of published works, articles from the journal the Union of Jurists in Romania, *Justiţia Nouă* (New Justice), legal, and archive materials. The journal *Justiţia Nouă* is relevant for the approach taken in this thesis because it provides an ongoing contemporary analysis of the socialist transformation of the legal realm in Romania. The authors of the articles published by *Justiţia Nouă* were Romanian and Soviet legal scholars[15], Romanian officials from the Ministry of Justice, members of the Romanian communist government, and representatives of the people in court panels (people's assessors). As stated in the foreword of the first edition (1945), the editorial board aimed this journal to be a reference and a guide for judicial personnel and also particularly young legal scholars.[16]

The legal sources can be differentiated into laws and decrees concerning the re-organization of the judiciary, and criminal laws (the penal codes of 1936 and 1948, with subsequent amendments). Sentences passed by the Military Tribunal of the Iaşi region complete my primary sources. These archival documents are into the possession of the National Council for the Study of the Securitate Archives (CNSAS) in Bucharest.[17]

This thesis is divided into four chapters. In the first chapter, I will provide a theoretical framework in which my argument concerning political repression exercised

[15] By legal scholars I am referring to individuals with higher education in jurisprudence. In some cases, the professional training or the professional position of the person who signed the articles was above his name. By Soviet legal scholars in particular, I am referring to the authors of those articles taken from Pravda or various Soviet legal journals and translated into Romanian.
[16] "Foreword", *Justiţia Nouă* 1 (1945): 2.
[17] Founded in 1999, CNSAS is the institution that administrates the archives of the former secret service of communist Romania.

through judicial mechanisms can be integrated. In this sense, I discuss several concepts relevant for my analysis, such as rule of law, transitional justice, social engineering, and legality. Second, I attempt to construct a methodological approach for discussing forced legal transplants from the Soviet jurisprudence to Romania.

In the second chapter, I will give the background of the communist take-over and Sovietization of Romania. Accordingly, I focus on the constitutions of 1948 and 1952 and I argue that their provisions enabled the dismissal of the rule of law ideal. Then, using secondary literature, I will briefly present the main features of the Soviet administration of criminal justice from 1917 to 1938. I will also address the main features of Soviet criminal law. Here I am particularly interested in emphasizing the principles guiding the implementation of Soviet criminal legislation.

In the third chapter, I will approach changes in the administration of criminal justice in Romania within the context of Sovietization. In order to demonstrate my argument concerning the transplantation of legal practices and concepts from Soviet jurisprudence to Romanian legal practice, I will show what were the stages through which "bourgeois justice" became the "people's justice". In this sense, I place special focus on the introduction of people's assessors into judicial panels. In the subsequent sections, I analyze the continuities and ruptures between the 1936 and 1948 Penal Codes of Romania concerning the conceptualization of political offence and the system of penalties.

In the fourth chapter I will reconstruct the process through which acts of plotting against the social order of the People's Republic of Romania (PRR) were framed as offences and brought before the Military Tribunal of Iaşi region. Moreover, I will analyze

documents issued by the main institutional actors which were entitled to investigate, prosecute, and sentence individual(s) accused of plotting against the social order of the PRR. My aim is to scrutinize the extent to which these actors sustained the repressive nature of the regime.

CHAPTER 1: THEORETICAL FRAMEWORK

In this chapter I will provide a theoretical framework for discussing the political repression exercised through judicial mechanisms in a totalitarian society. First, I will approach the "rule of law" ideal as a theory of governance. I will emphasize that, by disregarding the provisions of this principle, totalitarian governments eroded the legitimacy of their own legal regulation.

Second, I will examine the scholarly approaches to the role of criminal law in a totalitarian state. I will emphasize that because the establishment of totalitarian regimes lacked legitimacy, totalitarian rulers used the legal and judicial systems as a tool for assuring their right to rule. Moreover, by narrowing my focus on the Soviet context, I emphasize how the establishment of communist regimes was a period of transition from a traditional to a new social order, which lacked legitimacy. In this sense, I will argue that the communist regime used criminal justice as an instrument of social engineering. Moreover, I will argue that an ideological legislation helped the implementation of the Socialist transformation. This was a process of transition which known various stages of development. I will approach this issue in the section concerning legality.

In the last part of this chapter, I will focus on constructing a methodological approach for discussing the similarities between the Soviet and the communist Romanian approach to the administration of criminal law. Moreover, I will focus on the theory of legal transplant, which lays at the basis of my argument that starting in 1947/8, various judicial practices, and legal concepts prior unknown to Romanian became the keystones of political repression.

1.1. The "rule of law" principle

The essence of the "rule of law" ideal originates back to Ancient Athenian and Roman philosophers, who pleaded for governance under the law or the law binding the law-making power as guaranties of civil rights.[18] The medieval competition over jurisdictions between ecclesiastical and secular authorities enriched the rule of law's tradition and the late seventeenth and eighteenth century's debates on liberalism and the rise of the liberal political systems articulated its existence.[19]

In the introductory study of the volume *Rule of Law after Communism*, Martin Krygier and Adam Czarnota, argued that the conventional understanding of the rule of law "takes the form of simple recipes for institutions: punish only prospectively, not retrospectively, on the basis of clear, public, stable rules interpreted and enforced by an independent judiciary".[20] Yet, as a jurisprudential topic, the rule of law is a complex concept, which involves various considerations about the values which shape the functions and the purposes of law.[21]

Martin Keygier suggested three important aspects of this ideal as a mean for limiting the instrumental use of law in democratic societies: government by law,

[18] Brian Tamanaha, *On the Rule of Law. History, Politics, Theory* (Cambridge: Cambridge University Press, 2002), 7-14.
[19] Brian Tamanaha, *On the Rule of Law*, 15-32. The Medieval roots of the rule of law ideal go back to the twelfth-century disputes between subjects of ecclesiastical law and subjects of secular law (royal, feudal, urban laws). The bulk of these disputes questioned the sovereign's supremacy as a source of law. In this context, scholastic theologians were the first to introduce the expression "positive law", and distinguish between three main types of law derived from three different sources: *jus positivum* (the law given by the lawmaker); *jus divinum* (the law derived from a source of divine revelation); and *jus naturale* (the law whose sources is human nature, and especially human reason and conscience). However, in the sixteenth-century because the Church lost its hegemonic grip, the authority of both Divine and Natural law over affairs of state was for the first time seriously challenged. Furthermore, eighteenth-century Enlightenment consecrated the view that law is a construct of the sovereign's legislative authority will. Superseding any legacy of natural or customary law, positive law became the only legally binding law.
[20] Martin Krygier and Adam Czarnota, "The Rule of Law after Communism. An Introduction" in *The Rule of Law after Communism*, eds. Martin Krygier and Adam Czarnota (Dartmounth: Ashgate, 1999), 4.
[21] Martin Krygier and Adam Czarnota, "The Rule of Law after Communism", 4.

government under law, and rights. The first aspect refers to the stability and the predictability of laws as basic quarantines for decreasing political arbitrariness. The second aspect, according to Keygier involves a legal and political culture in which law counts in public life. In other words, it means that political officials are "confined and confinable by legal rules and legal challenge".[22] The third aspect refers to the desideratum that governments *by* and *under* law assure citizens' protection from arbitrary intrusion, such as ideological interference.[23]

Europe's twentieth-century dictatorial experience demonstrated how the rule of law ideal could be distorted by giving enacted law supremacy over constitutional rights and liberties. Aiming to explain the interaction between law and totalitarian regimes, Antonio La Spina argued that in a society regulated by a system of rules or legal provisions highly distorted by ideological influences, "law existed without the rule of law".[24] In other words, La Spina emphasized how totalitarian regimes ruled in accordance with certain laws, but because those laws were subject to constant violations by the agencies which enforced them, their legal order was lawless.[25]

1.2. Approaches to the role of criminal law within the totalitarian context. The Soviet example

Totalitarianism has been a historiographical topic which has challenged historians, sociologists, and political scientist over the last few decades. Hannah Arendt in *The Origins of Totalitarianism* (1951), and Carl Friedrich and Zbigniew Brzezinski in

[22] Martin Krygier. "Marxism and the Rule of Law", *Law and Social Inquiry* 15, no. 4 (1990): 643.
[23] Martin Krygier, "Marxism and the Rule of Law", 642-644.
[24] Antonio La Spina, "Law and Totalitarian Effectiveness" in *Totalitarian and Post-Totalitarian Law*, eds. Adam Podgorecki and Vittorio Olgiati (Aldershot UK: Dartmouth, 1996), 51. By "rule of law", La Spina, referred to, equality before law and punishibility of a given behavior only in accordance with a pre-established legal provision that prohibits it.
[25] Antonio La Spina, "Law and Totalitarian Effectiveness", 51.

Totalitarian Dictatorship and Autocracy (1961), made the first attempts to conceptualize twentieth-century totalitarian regimes. Nowadays, these books are regarded as classic studies on this topic, because, since their publication, much has been learned about this topic. Recent scholarly literature has emphasized two main characteristics of totalitarian rule: first, the existence of a small ruling elite (a single party) who monopolizes power by imposing an ideology on society which aims to conform all aspects of human life, and second, the constant use of various persuasive and coercive procedures in order to safeguard ideological ideas.[26]

Discussing totalitarianism and law as socially interrelated variables, Adam Podgorecki argued that law in totalitarian societies had a preconceived function, which was "more important than the law itself".[27] The author explained that the interpretation of the content of laws in totalitarian systems was "constantly manipulated to reflect politically changeable situations".[28] In other words, Podorecki claimed that totalitarian rulers designed their own "legal reality", which consisted of ideologically motivated legal regulations for all aspects of social and personal life.[29]

Totalitarian regimes came to power by illegitimately overturning a traditional or democratic and legitimate form of government.[30] Being non-democratic systems of government, totalitarian regimes inherently lacked legitimacy. As explained by P.

[26] Lavinia Stan, "The American Debate over the Essence of Totalitarianism" in *Arhivele Totalitarianismului* [The Archives of Totalitarianism], 4 (1994), 40-42. Also see Paul Brooker, *Non-Democratic Regimes: Theory, Government and Politics* (Houndmills: Palgrave Macmillan, 2000), and Juan J. Linz, *Totalitarian and Authoritarian Regimes* (Colorado: Lynne Rienner Publishers, 2000).
[27] Adam Podgorecki, "Totalitarian Law: Concepts and Issues" in *Totalitarian and Post-Totalitarian Law* eds. Adam Podgorecki and Vittorio Olgiati (Aldershot UK: Dartmouth, 1996), 20.
[28] Adam Podgorecki, "Totalitarian Law: Concepts and Issues", 20.
[29] Adam Podgorecki, "Totalitarian Law: Concepts and Issues", 26.
[30] Juan J. Linz, *Totalitarian and Authoritarian Regimes*, 53.

Brooker, legitimacy means "the right to rule".[31] Moreover, because totalitarian rulers pursue private rather than collective goals, they have to use coercive measures in order to underpin their right to rule.[32] In this context, the legal and judicial systems became tools for creating legitimacy for both the ruler and his political regime.[33] In this thesis I approach the Sovietization of Romanian judicial and juridical systems as a process through which a non-legitimate regime claimed and consolidated its right to rule during a period of transition toward a new social order.

The term "transitional justice" generally refers to a wide range of judicial actions and policies enacted by states that are going through a process of political transition from a dictatorial to a democratic system of governance.[34] Therefore, albeit generally used in a different context, the term transitional justice can be useful in describing communist regimes' policy of reforming justice. Nevertheless, the term should be applied carefully and only in connection with the transition toward the "new socialist order", in which the administration of justice became an instrument of social engineering. Approaching the idea of social engineering within the Soviet context, Vladimir Tismăneanu stressed how communists attempted to transform society through various engineering programs aimed at specific economic or social ends.[35] More precisely, such programs focused on the abolishment of private ownership of land, the regimenting of intellectual life and culture, and the instrumentalization of the judicial system and procedure. As explained by Tismăneanu, the communist party apparatus carried out the achievement of these goals

[31] Paul Brooker, *Non-Democratic Regimes*, 100.
[32] Paul Brooker, *Non-Democratic Regimes*, 100.
[33] Otto Kirchheimer, *Political Justice. The Use of Legal Procedure for Political Ends* (Princeton, Princeton University Press, 1961), vii.
[34] Raluca Grosescu and Raluca Ursachi, *Justiţia penală de tranziţie. De la Nürnberg la postcomunismul românesc* [Transitional justice. From Nürnberg to post-communist Romania] (Iaşi: Polirom, 2009), 16.
[35] Vladimir Tismăneanu, *Reinventing Politics: Eastern Europe from Stalin to Havel* (New York: The Free Press, 1992), 31.

through various politics aimed at repressing not only individuals, but also the society as a whole.[36]

Terror is perhaps one of the first concepts associated with totalitarian forms of government when discussing their repressive nature. Concerning this issue, H. Arendt argued that "terror is the essence of totalitarian domination". Arendt also suggested that for totalitarian regimes terror was more than a means for the suppression of opposition; it was the law by which the force in power ruled its subjects.[37] Subscribing to this paradigm, early scholars of Soviet history defined the system developed under Stalin's dictatorship as a "monolithic and unitary dictatorship whose existence and survival were based on terror".[38] Nevertheless, experts who began to study the relationship between terror and law made significant use of this approach.

Robert Sharlet provided a useful differentiation between the Bolshevik and the Stalinist approach to law (including both cases of civil litigation and criminal prosecution). Moreover, as Sharlet argued, the Bolsheviks understood law as a bourgeois instrument of economic and social control which could hinder the realization of their prevision of a classless society without coercion".[39] However, beginning in the late twenties, Stalin re-conceptualized this vision by transforming law into an "instrument of social engineering".[40] Consequently, according to Sharlet "terror was *legalized* and the

[36] Vladimir Tismăneanu, *Reinventing Politics*, 31-32.
[37] Hannah Arendt, *The Origins of Totalitarianism*, New York: Harcourt Brace Jovanovich, 1975. 464.
[38] Arch J. Getty and Roberta Manning, *Stalinist Terror: New Perspectives* (Cambridge: Cambridge University Press, 1993), 1. The popularity of the paradigm of the Soviet system under Stalin as a hierarchical dictatorship in which a ruling elites holds the monopoly of power and implements its orders with the help of pseudo-military party organizations has to be understood in the Cold War context.
[39] Robert Sharlet, "Stalinism and Legal Culture" in *Stalinism. Essays in Historical Interpretation* ed. Robert C. Tucker (New York, Norton, 1977), 163.
[40] Robert Sharlet, "Stalinism and Legal Culture", 163.

criminal process was *politicized*" by criminalizing certain undesirable political and social behaviors.[41]

In his book, *Soviet Criminal Justice under Stalin*, Peter Solomon took a similar approach to the paradoxical relationship between terror and law in Soviet history. Claiming that terror was neither the only, nor even the main form of social control used during Stalinist rule, the author emphasized how the Stalinist regime mandated criminal law with shaping individuals to conform to socialist order.[42] As Solomon explained, the core of the Soviet system of criminal justice was the instrumental use of law regardless of any societal commitment to the rule of law principle.[43]

1.2.2. The question of legality

Analyzing Soviet justice in operation, Samuel Kucherov emphasized that "[o]ne can have the best laws, but if the citizens and the officials do not fulfill them, there will be no legality in the country".[44] As Kucherov argued, the existence of laws does not consequently imply that the principle of legality, meaning the requirement that all laws should be strictly observed is obeyed.[45]

According to Harold Berman, the distinctive feature of the communist concept of legality was that it denoted both party-subservient institutions and party loyal citizens. This type of legality fluctuated in accordance with the circumstances of the times.[46] Therefore, Soviet jurisprudence distinguished between three forms of legality: "bourgeois

[41] Robert Sharlet, "Stalinism and Legal Culture", 164.
[42] Peter Solomon Jr., *Soviet Criminal Justice under Stalin* (Cambridge: Cambridge University Press, 1996), 1.
[43] Peter Solomon, *Soviet Criminal Justice*, 6.
[44] Samuel Kucherov, *The Organs of Soviet Administration of Justice: their history and operation* (Leiden: E.J. Brill, 1970), 662.
[45] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 661.
[46] Harold Berman, "Soviet Law Reform-Dateline Moscow 1957" in *Yale Law Journal*, Vol. 66 (1957) quoted in Otto Kirchheimer, *Political Justice*, 285.

legality", "revolutionary legality", and "socialist legality".[47] In the absence of the rule of law's ideal, communist legal theoreticians invoked either the "revolutionary legality" or the "socialist legality" in order to require observance to law from both individuals and state institutions.

Otto Krichheimer explained the concept of "revolutionary legality" as a legal order "governed by the practical requirements of a factual situation".[48] In practice this concept described those laws which emanate from the revolutionary government immediately after the conquest of power.[49] This concept had a dual meaning. On the one hand, it emphasized how law was in the hands of a new revolutionary social and political order, which used it as an instrument of liberation and progress. Accordingly, "revolutionary legality" precisely opposed "bourgeois legality" in order to emphasize the new regime's struggle to elevate society to a higher stage of development. On the other hand, by associating legality to revolution the new political authority elevated its revolutionary rule to a planned and disciplined exercise of power.[50]

As R. Sharlet explained, "socialist legality" aimed to describe a higher degree of observance and fulfillment of laws, which was achieved supposedly after the establishment of the new social order.[51] However, according to Krichheimer, "socialist legality" was essential to legitimize and institutionalize the results of industrialization and

[47] During the year of the civil war, the Soviet theory of law stated that the supreme political authority, the Party, ruled only by laws enforced in accordance with the "revolutionary legality".
[48] Otto Kirchheimer, *Political Justice*, 285.
[49] Otto Kirchheimer, *Political Justice*, 288.
[50] Otto Kirchheimer, *Political Justice*, 286-287. In this context, the new force of power denounced the old "bourgeois legality" for being oppressive. Kirichheimer argued that although the balance of power changed, law remained an instrument of dominance, but with a different mask.
[51] Robert Sharlet, "Stalinism and Soviet Legal Culture", 179. By the end of the 1930s, because the communist ideology focused on the need of defending the revolutionary conquests, Soviet legal theoreticians focused on conceptualizing the notion of "socialist legality". It is important to mention that in the context of the promulgation of the 1936 Soviet constitution, Stalin argued for the stability of the laws, formally opening the era of a positivist-derived jurisprudence. For more details concerning the stabilization of law under Stalin, see pages 168-178.

collectivization. It did this by forcing the observance of the law by all citizens and agencies of the government administration through expressly established institutions and legal procedures.[52]

Berman's observations concerning the framework of "socialist legality" are particularly relevant to this thesis because they address this concept within the context of the relationship between law and terror. More precisely, Berman argued that Stalin's approach to "socialist legality" reflected the understanding of law as a *necessity* in addition to terror, whose purpose was to assure the existence of a system based on total control into a developing country.[53] The peculiarity of the communist approach to legality was that, in reality, compliance with the law was demanded only from citizens, officials, organizations, or institutions, excepting the Party. [54]

1.3. Framework for discussing the Soviet influence on the Romanian judiciary and criminal law

According to Alan Watson, laws do not simply "mirror" society, but reflect the interests of society, or more precisely, the interests of some groups within the society. Addressing the relationship between law and society from a comparative perspective, Watson emphasized how legal rules operate on the level of ideas which flow across national frontiers. To describe the circulation of law from one country to another, Watson coined the concept of "legal transplant".[55] At the basis of this concept, the author laid the

[52]Robert Sharlet, "Stalinism and Soviet Legal Culture", 298.
[53] Harold Berman, *Justice in the USSR: An Interpretation of Soviet Law* (Cambridge: Harvard University Press, 1963), 64.
[54] Otto Kirchheimer, *Political Justice*, 685. It is important to mention that after the Twentieth Congress of the USSR (1956), the concept of "socialist legality" started to be use in order to stress a departure from the legal order of Stalinist regime. (696).
[55] Alan Watson, *Legal Transplants. An Approach to Comparative Law*, 2nd edition (Athens: University of Georgia Press, 1993), 21. Watson addressed this concept especially in the context of Roman law and English common law reception in European countries.

argument that laws develop not because a certain rule was "the inevitable consequence of the social structure", but because those with control over the law making process came to know a foreign rule and observe its (apparent) benefits.[56] Focusing on the Western legal tradition, Watson explained that in democratic societies a legal change occurs when a "pressure force" (individuals with the right to vote, who bound together by common aims) and the existing ruling elite share a mutual interest.[57] In a totalitarian state, as Watson suggested, this "pressure force" was the Party.[58] Consequently, because, in totalitarian societies the ruling elite monopolized the Party, legal changes occurred exclusively in accordance with the will of the elite.[59]

Concerning legal transplants, Jörg Fedtke emphasized that foreign ideas have been borrowed in the majority of the legal areas (private, administrative, or criminal law), through either voluntary agreements or forced imposition. [60] Watson described the latter as a new ruler's aim to place law under its authority.[61] In this regard, Fedtke stressed that under "external pressure", the implementation of certain legal ideas requires the intervention of military force.[62] Arguing for the comparability of different legal systems, Rodolfo Sacco explained that the imitation of a foreign legal model (*i.e. legal*

[56] Alan Watson, "Comparative Law and Legal Change", *Cambridge Law Journal* 37, no. 2 (1978): 315.
[57] Alan Watson, "Comparative Law and Legal Change", 324-333. According to the author, in democratic societies a pressure force is a relatively small group of society as whole, for example, liberation movements.
[58] Alan Watson, "Comparative Law and Legal Change", 326.
[59] Alan Watson, "Comparative Law and Legal Change", 333.
[60] Jörg Fedtke, "Legal Transplants" in *Elgar Encyclopedia to Comparative Law* ed. Jan Smith (Cheltenham: Edward Elgar Pub, 2006), 435-436.
[61] Alan Watson, *Legal Transplants*, 89.
[62] Jörg Fedtke, "Legal Transplants", 436.

transplantation) occurs either as "the effect of a widespread political movement" (prestige) or as "a selective adaptation of particular legal institutions or rules".[63]

In this thesis I argue that from 1945 to 1953, revolutionary (originating from Marxist-Leninist ideology) and Stalinist (originating from the legal order of the USSR) judicial institutions, and juridical practices and ideas were transplanted to Romania at different stages. My thesis is situated in this period and focuses on the reorganization of the judiciary and the evolution of criminal law. Chronologically, I differentiate between two main stages of this process: the first lasted from 1945 to 1947 and the second from 1948 to 1953. Conceptually, I differentiate between judicial and juridical systems. The former (also known as the judiciary) refers to the system of courts that interprets and applies the laws, or in other words administrates justice. The latter describes the set of laws enforced by the political authority in order to regulate the functioning of an organized society.

That the Sovietization of Romania was part of a wide range of ideological and institutional transformations launched by the Soviet Union in East-Central Europe at the end of World War II is nowadays a well establish chapter of history. As Vladimir Tismăneanu emphasized, two distinctive periods of the early post-war Soviet politics in this region can be identified: the communist takeover, which was accompanied by an accelerated destruction of democratic pluralism values [1944/5-1947]; and the communist offensive development, or Stalinization [1947/8-1953].[64] According to E. A. Rees,

[63] Rodolfo Sacco, "Legal Formats: A Dynamic Approach to Comparative Law" in *The American Journal of Comparative Law* 39 (I), no. 1 (1991): 3-4. The spread of French legal rules and institutions throughout Europe in the first half of the nineteenth century stands as a point of reference for legal transplants trigged due to prestige as well as to military intervention.

[64] Vladimir Tismăneanu, Introduction to *Stalinism Revised. The Establishment of Communist Regimes in East-Central Europe* (Budapest: Central European Press, 2009), 4-5.

Sovietization involved the transplantation of institutional structures and methods of rule developed in the USSR into various environments (political, economic, social, cultural, etc.) provided by the states of Eastern and Central Europe after 1945.[65] Moreover, as the author pointed out, Sovietization meant politicizing and ideologizing all aspects of society through the consolidation of the Party-state, which monopolized and limited "the autonomy of social, economic, and cultural sub-systems".[66]

Although the existence of a "Soviet master-plan" concerning the Sovietization of East-Central Europe is questionable, scholars have emphasized that the USSR control over its post-war spheres of influence followed similar patterns of development. Implemented by communist cadres who returned to their home countries at the end of the war, the process of Sovietization began by molding state institutions and agencies in accordance with those of the USSR.[67]

It is in this context that one has to approach the transformation of justice in communist countries. In other words, one has to analyze the introduction of Soviet-type judicial institutions, legal concepts, and practices. Addressing this issue within the Romanian context, Dennis Deletant emphasized that the reorganization of the court system, the introduction of the "people's assessors" and the "counterrevolutionary" terminology in the text of criminal law trimmed "the judicial system to suit the political ends of the Communist Party".[68]

[65] E. A. Rees, "The Sovietization of Eastern Europe" in *The Sovietization of Eastern Europe. New Perspectives on the Postwar Period* eds. Balázs Apor, Péter Apor, and E.A. Rees (Washington: New Academia Publishing, 2008),1.
[66] E. A. Rees, "The Sovietization of Eastern Europe", 5.
[67] E. A. Rees, "The Sovietization of Eastern Europe", 11. See also Vladimir Tismăneanu, *Stalinism Revised*, 3.
[68] Dennis Deletant, *Communist Terror in Romania: Gheorghiu-Dej and the Police State, 1948-1965* (London: Hurts and Company, 1999). 84-86.

Arguing for forced transplantation of legal ideas and concepts from the Soviet jurisprudence to Romania during the period I am focused on, I emphasize how the "pressure force" (which Watson described it as the factor that triggers the borrowing process), was an elite group subordinated directly to Moscow. More precisely, according to Stelian Tănase, from 1948 to 1953 the ruling elite in Romania was an "outside faction", the so-called *Muscovite faction,* controlled primarily by non-ethnic Romanian communists who spent the war in exile in Moscow. In 1944, they returned to Romania with the support of the Red Army and became the main agents of the Soviet-type transformation of society.[69] According to Tănase, this outside group imposed itself over the local communist faction and became determining factor in shaping the phenomenon of repression during the establishment of the socialist rule in Romania.[70] V. Tismăneanu, who portrayed these Soviet-types elites as the "watch dogs" of the communist ideology[71], also stressed their central role in the institutionalization of Stalinism in Eastern Europe. In connection with the influence of this "suzerain" elite group, I stress the presence of the Red Army in Romania was also a major factor that facilitated the imposition of a new legislation.[72]

 Stelian Tănase,*Elite şi societate. Guvernarea Gheorghiu-Dej 1948-1965* [Elites and society. Gheorghiu-Dej government] (Bucureşti: Humanitas, 1998), 37-38.

[70] Stelian Tănase, *Elite şi societate. Guvernarea Gheorghiu-Dej 1948-1965*, 38.

[71] Vladimir Tismăneanu, "Diabolical Pedagogy and the (Il)logic of Stalinism in Eastern Europe" in *Stalinism Revised.* (Budapest: Central European Press, 2009), 34.

[72] For more details concerning the Soviet military occupation in East-Central Europe see Mark Kramer, "Stalin, Soviet Policy, and the Consolidation of a Communist Bloc in Eastern Europe, 1944-53" in Vladimir Tismăneanu, *Stalinism Revised*. For a close look into the history of Romanian Communist Party see Dennis Deletant, *Communist Terror in Romania*.

CHAPTER 2: Subordinating Justice in Communist Romania. Avenues Toward the Sovietization of the Romanian Judicial and Juridical Systems

I will begin this chapter by addressing the particular features of government provided by the communist constitutions of 1948 and 1952. This will be done in order to emphasize how both Acts dismissed the ideal of the rule of law by rejecting the principles of separation of powers and judicial review over the constitutionality of laws. In this context I will also stress the arbitrariness of legislative technique. [GNA]

Following this, in the second section, I will present the basic traits of the Soviet system of criminal justice. Here I will subscribe to P. Solomon's thesis that Soviet leaders approached criminal law as an instrument of social engineering. Lenin and Stalin both adapted and used it in implementing their immediate political goals. In light of this argument, I will present the main stages of the development of the system of Soviet criminal justice. I will show which agencies in particular had jurisdiction over the cases which involved political offences.

Finally, in the third section, I will highlight the main features of Soviet criminal law. Particular emphasis will be placed on the principle which guided the implementation of criminal law as well the provisions of article 58 of the 1926 Soviet penal code. The focus placed on article 58 it is not random. I have selected this article because it was the main pillar of repression exercised through judicial procedures in the USSR.

2.1. Romania's path to Sovietization: toward no rule of law

In the summer of 1941 Romania engaged in its first battle of World War II. At that time the country was a member of the Axis and an authoritarian state under the rule

of Marshal Ion Antonescu. By 1943, the war had become increasingly unfavorable to Germany and its allies, and Romania was facing "unconditional surrender".[73] It was in this national and international political context, that on August 23, 1944 a coup d'état deposed Marshal Antonescu and put the Romanian Army on the side of the Allies. The main architects of this deposition were King Michael and the leaders of the democratic parties (the National Peasant and National Liberal parties).[74]

On August 30, 1944, following the coup, Soviet troops entered Bucharest. An Allied Control Commission was set up to negotiate and armistice with the interim Romanian government. This commission was placed under the control of the Soviet High Command.[75]

Both the coup and the presence of the Red Army changed the status of the Communist Party in Romania. At the beginning of 1944 the Romanian Communist Party (RCP) had no resonance in the Romanian political arena. However, by the end of 1944, the Soviet forces of occupation commissioned the RCP to prepare the Soviet takeover of Romania.[76] As Deletant observed, accomplishing this goal required the neutralization of all existing means of maintaining social order (the army, the judiciary, the police). It also required the creation of mass support for the establishment of a communist regime.[77]

[73] Dennis Deletant, *Communist Terror in Romania*, 34-35. On January 1943, the Red Army defeated the Axis' troops at Stalingrad. The Romanian army that took part in the German offensive suffered significant losses. The fact that Germany lost the initiative in the war against USSR had disastrous consequences for Antonescu. At the Casablanca conference (January 1943), the Allies insisted upon Romania's "unconditional surrender". The armistice conditions represented a threat to Romania's territorial integrity in the face of the Soviet occupation.
[74] Dennis Deletant, *Communist Terror in Romania*, 35-37.
[75] For details about the armistice agreement see, http://avalon.law.yale.edu/wwii/rumania.asp.
[76] Dennis Deletant, *Communist Terror in Romania*, 52-55. See also Stelian Tănase, *Elite şi societate. Guveranrea Gheorghiu-Dej*, 53-59.
[77] Dennis Deletant, *Communist Terror in Romania*, 55.

Romanian communists achieved these assignments gradually as they succeeded in occupying more ministerial positions.

In the first government set up after the 1944 coup, the Communist Party secured only the seat of Minister of Justice, which was held by Lucreţiu Pătrăşcanu. By the end of the 1944, the Communist Party succeeded in occupying more key ministerial positions such as the office of Deputy Prime Minister, the Minister of Interior, the Minister of Communication and Public Works. On March 6, 1945, the king accepted to appoint a new cabinet in which the communists held fourteen of the eighteen ministerial offices. Petru Groza, who was a trusted nominee of the Soviet Deputy Foreign Minster Andrei Vyshinski, was named Prime Minster. One of the first decisions of the Groza government was "a purge of Fascists from public life".[78] From 1945 to 1947 a wave of arrests were made, mostly targeting high-ranking army officers, former government members, and leaders of the Romanian historical parties (the National Peasant and the National Liberal parties). After eliminating the political opposition, the Communist Party forced the king to abdicate. On December 30, 1947, the People's Republic of Romania (PRR) was declared and by February 1948, it had its own constitution. The constitution of the PRR followed the model of the Soviet constitution of 1936 because it was drafted in an environment where there was complete control of a packed parliament as well as a judiciary subservient to the Communist Party.[79]

Prior to 1948 three constitutions (which had been enacted in 1866, 1923, and 1938) and a series of Constitutional Acts (issued between September 1940 and August 1944) served as the fundamental laws of Romania. The constitutions of 1866 and 1923

[78] Dennis Deletant, *Communist Terror in Romania*, 73.
[79] Stephen Fischer-Galati, *Romania* (New York: Frederick A. Praeger for the Mid-European Studies Center of the Free European Committee, 1957), 105.

both provided various liberal principles of government, including the separation of powers. This principle was disregarded for the first time in 1938, when, fallowing a coup d'état, the King Carol II granted a new constitution. This new constitution drafted in 1938 put the executive and legislative powers solely in the hands of the monarch. After Carol II abdicated in September 1940 his constitution was suspended. The new head of the state, Marshal Ion Antonescu, governed instead through a series of Decree. Antonescu exercised both executive and legislative powers, and had control over the judiciary until August 1944 when the 1923 constitution was reenacted.[80] However, in the four years following its reenactment, the constitution lost most of its validity.

Both of these communist constitutions disregarded the principle of sovereignty of the Romanian nation, the separation of powers, and the judicial review over the constitutionality of the legislative and executive acts.[81] The principle of the separation of powers implies a system based on checks and balances between the state powers. Although the judicial power is bound to apply both the constitution and the ordinary law, when the two conflict each other, judges have to make sure the former will prevail. In other words, in applying the law, judges have to consider first the citizens' rights and liberties as guaranteed by the constitution.[82] The constitution of 1923 gave the High Court of Cassation and Justice (Supreme Court) exclusive control over the practice of judicial review.[83] The constitution of 1938 retained this judicial practice.[84] None of the

[80] Eleodor Focşeneanu, *Istoria constituţională a României: 1859-2003* rev. ed. [The constitutional history of Romania] (Bucureşti, 2008), 117-138.
[81] Eleodor Focşeneanu, *Istoria constituţională a României*, 204.
[82] Eleodor Focşeneanu, *Istoria constituţională a României*, 209-210.
[83] The1923 Constitution of Romania, art. 103.
[84] The 1938 Constitution of Romania, art. 75.

communist constitutions mentioned the principle of judicial review of the constitutionality of laws.

The Grand National Assembly (GNA)[85], the highest agency of state power in the PRR was the country's sole legislative power. The GNA appointed the cabinet, amended the constitution, and established the budget.[86] The Act of 1952 entitled it to be the guardian of the constitution.[87] Elected for four years, the members of the GNA held session twice a year. In the interval between sessions the Assembly's functions were fulfilled by its Presidium (permanent agency). The Presidium appointed both the judges and the Deputy Prosecutor General of the PRR.[88] By 1948 the Communist Party succeeded in repressing any political opponents and therefore the members of the Communist Party dominated the GNA. For this reason, it can be concluded that the legislative-making process expressed in fact the will of a single party, the Communist Party.

Starting in 1948 the leaders of this new regime focused on transforming Romania into a totalitarian state. Two constitutions, enacted in 1948 and 1952 respectively, marked both the beginning and the achievement of institutional Sovietization in Romania. In addition, a highly ideological and repressive criminal legislation made the consolidation of the communist political power possible.

[85] Since 1946, when the Groza government abolished the Senate, the Romanian Parliament was unicameral.
[86] The 1948 Constitution of the PRR, art. 38-39.
[87] The 1952 Constitution of the PRR, art. 24-j.
[88] The 1948 Constitution of the PRR, art. 89 and art. 98.

2.2. Main features of the Soviet criminal justice administration between 1917 and 1938

As Peter Solomon emphasized, the turbulent course of Soviet history influenced the history of the legal realm.[89] Although the Soviet judicial system went through various operational stages, it is questionable if one can speak about a gradual development. The Communist party, as coordinator of legal agencies, intervened in the activity of the judiciary in an effort to consolidate its legitimacy either by rejecting or embracing legality.

In tsarist Russia the authority of the legal institutions was weak due to the lack of support from the majority of the rural population. After the 1917 Revolution the Bolsheviks primarily approached law as a bourgeois instrument of power. Arguing against the formalism of bourgeois laws and legal institutions, the Bolsheviks put the administration of justice into the hands of ordinary people who sustained their political program. Beginning in the early thirties, Stalin approached law, especially criminal law, and its administration as a mechanism of social engineering.[90]

Two important features characterized the administration of justice during the Civil War (1917-1922): Bolsheviks' ambivalent attitude toward the role of law in a socialist state and the introduction of "people's courts" and "revolutionary tribunals". Concerning the first issue, as was stressed by Solomon, after the Revolution the majority of the Bolshevik leaders argued that law and legal institutions were bourgeois instruments of rule which should be dissolved.[91] The advocates for this idea emphasized how under communism, the proletariat and the peasantry should be allowed to govern themselves

[89] Peter Solomon, *Soviet Criminal Justice*, 4-5.
[90] Peter Solomon, *Soviet Criminal Justice*, 3-4.
[91] Peter Solomon, *Soviet Criminal Justice*, 18.

free of the restrains of either private or civil law. However, as Solomon also observed, Lenin realized that criminal law was particularly indispensable for accomplishing the transition from capitalism to socialism.[92] Therefore, during the Civil War, criminal law gained more and more attributions which went from focusing on combating political opponents to disciplining unruly workers. By the fall of 1918 Lenin officially endorsed the concept of "revolutionary legality" as one of his political slogans.[93]

In November 1917 Decree no. 1 on courts replaced all pre-revolutionary Russian judicial institutions with local "people's courts". This decree also enforced the creation of the "revolutionary tribunals".[94] The people's courts had jurisdiction over civil and criminal cases which were legally classified as non-political. They were presided over by a local judge and two people's assessors. The revolutionary tribunals, on the other hand, heard cases which involved counterrevolutionary activities; in other words, they investigated political offences. These panels consisted of a judge and six people's assessors.[95] By introducing the assessors into the administration of justice, the Bolsheviks argued that they gave the masses the possibility to govern themselves without the restrains which were imposed by the tsarist regime. Although decree no. 1/1917 abolished the old judiciary, it is important to mention that the people's courts continued to pronounce sentences in accordance with the legislation of the tsarist government. However, judges were only able to invoke only those laws which did not conflict with the

[92] Peter Solomon, *Soviet Criminal Justice*, 18.
[93] Peter Solomon, *Soviet Criminal Justice*, 19.
[94] Samuel Kucherov, The *Organs of Soviet Administration of Justice*, 21. In accordance with the Statute of Revolutionary Tribunals of March 18, 1920, these tribunals could pronounce sentences based only on the testimony of the defended taken during the preliminary interrogation, without hearing witnesses. Furthermore, revolutionary tribunals were authorized to stop judicial proceedings at any stage if the court reached a decision. For more details, see Kucherov, 51.
[95] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 24.

revolutionary consciences, the legal order, or the political goals of the socialist government.[96]

In addition to the people's courts and the revolutionary tribunals, it must be one emphasized that during the Civil War, the *Cheka* (the Soviet agency of state security) and the revolutionary military tribunals both played major roles in the administration of justice. Moreover, the Bolsheviks leaders authorized the *Cheka* to investigate and punish any counterrevolutionary activities. The *Cheka* used extralegal coercion to punish either real or imagined political enemies of the regime without the requirement of a judicial hearing.[97]

Beginning in 1918 revolutionary military tribunals which were granted jurisdiction over any counterrevolutionary crimes committed in office by either civilians or military personnel alike were established in every military region of Russia. Due to the fact that in these military regions there were no regular people's courts, the military tribunals tried all criminal cases. In 1921 a unified system of tribunals was created under the supervision of a single Supreme Tribunal.[98]

Near the end of the Civil War the majority of the Bolsheviks leaders overcame their anti-law view and acknowledged the need for a legal framework in order to maintain control over society. Consequently, an intriguing system of justice which supported both

[96] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 24.
[97] Peter Solomon, *Soviet Criminal Justice*, 20. In order to understand the role of the *Cheka*, the statement given in *Pravda* by the assistant of Felix Dzerzhinsky, (the first chairman of this commission), M. Ya. Latisis is illuminating: "[W]e are destroying the bourgeoisie as a class. Do not look, during the investigation, for material, as to whether the accused acted against the Soviet power by word or deed. The first question you have to present to him is as to what class does he belongs, what is his origin, education, training, or profession. These questions have to decide the fate of the accused." Quoted in Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 57.
[98] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 52-54. It is important to mention that the revolutionary military tribunals had a special status, not being subordinated to the ministry of justice. However, because at the front there were no regular people's court, military tribunals had jurisdiction over criminal cases.

law and extra legal repression began to develop.[99] Robert Scharlet explained that by 1921 the Marxist ideal of simple, flexible, and accessible popular participations in judicial institutions gradually became more blurred. The Soviet government enacted new statues which stratified the court system and stated more explicit the rights and duties of all judicial institutions.[100] These developments characterize what Scharlet called the legal culture of the New Economic Policy (NEP).[101] Chronologically, from 1921 to 1928 a second stage in the development of the Soviet judicial system can be identified.

In 1922 a new Statute on the Court Structure of RSFSR came into force. In accordance with its provisions, the judiciary was organized on three levels: local, regional, and central. An important innovation of the law reform of 1922 was the abolishment of revolutionary tribunals. Consequently, the people's courts, with a panel consisting of a permanent judge and two assessors, received jurisdiction over all civil and criminal cases.[102] However, revolutionary military tribunals continued to function as extraordinary courts, hearing cases involving counterrevolutionary acts.[103]

Addressing the status of law under NEP, Solomon emphasized that, although to a limited extent, this period represented the first victory of the advocates for a uniform and centralized judicial system.[104] Samuel Kucherov expressed a similar point of view by arguing that in the early twenties Soviet leaders realized that the implementation of their economic policies required a stable legal framework.[105] Nevertheless, both authors

[99] Peter Solomon, *Soviet Criminal Justice*, 26.
[100] Robert Scharlet, "Stalinism and Soviet Legal Culture", 159.
[101] Robert Scharlet, "Stalinism and Soviet Legal Culture", 159-160.
[102] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 79-80.
[103] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 84.
[104] Peter Solomon, *Soviet Criminal Justice*, 26-27.
[105] Samuel Kucherov, *The Organs of Soviet Administration of Justice*, 79.

stressed that when the NEP period ended, the question of either using law or eliminating it re-emerged in the Bolshevik leadership.

It was in this context that Stalin launched the First Five Years Plan (1928-1933). Under this, fast industrialization and forced collectivization campaigns challenged the role of the judiciary. This period can be distinguished as a third stage in the development of the Soviet judicial system. As Sharlet mentioned, beginning in the late twenties the Soviet power subordinated the administration of justice toward new political ends, particularly during the *dekulakization* campaign. The use of criminal law legitimized, institutionalized, and rationalized the repression of peasants who resisted collectivization.[106] The people's courts and the extrajudicial bodies of OGPU (the political police since 1923) heard political cases. During this stage the administration of criminal law was significantly affected by a decline in the observance of investigation procedures, arrests, and trials. Overall, this situation led to a decline of legality.[107]

By the mid-1930s, Stalin and the Deputy Procurator General, Andrei Vyshinskii, launched a campaign aimed at strengthening the authority of criminal law. Beginning in 1934, Soviet authorities officially endorsed the restoration of "socialist legality".[108] Efforts were made to bureaucratize and professionalize the activity of legal agencies. The Procuracy of the USSR (which was established in June 1933) gained additional powers, such as the right to supervise the observance of law during preliminary investigations and court proceedings.[109] Also beginning in 1934, political offences could be heard by the

[106] Robert Scharlet, "Stalinism and Soviet Legal Culture", 163-164.
[107] Peter Solomon, *Soviet Criminal Justice*, 149.
[108] Peter Solomon, *Soviet Criminal Justice*, 156.
[109] Peter Solomon, *Soviet Criminal Justice*, 164.

special collegia of regional and republican courts. These special panels joined the military tribunals as the main judicial bodies for administrating political justice.[110]

The Great Terror of 1937-1938 interrupted the efforts to restore the authority of law. Engineered by Stalin himself, the Terror consisted of three main processes: a campaign of vigilance, purges against leading party and governmental of officials, and mass arrests.[111] In order to ensure the implementation of these processes, Stalin and Vyshinski required prosecutors and judges to "cooperate" with the NKVD (the successor of the OGPU from 1934). For example, prosecutors and judges were expected to sign orders of arrests and to condemn individuals respectively in accordance with the suggestions made by the investigation officers.[112]

By the end of 1938, as the policy of Terror decreased in its intensity, the Soviet authorities made an important distinction between the administration of ordinary and political justice. Moreover, the decree of November 17, 1938 eliminated the *special collegia* of regional and republican courts. Consequently, until Stalin's death in 1953, the Special Boards of the NKVD and the military tribunals became the main agencies entitled to handle political cases.[113]

2.3. Soviet criminal law

In addition to the re-organization of the court system, the legal reform of 1922 provided the introduction of the first Criminal Code of the RSFSR. Although it was

[110] Peter Solomon, *Soviet Criminal Justice*, 231.
[111] Peter Solomon, *Soviet Criminal Justice*, 235.
[112] Peter Solomon, *Soviet Criminal Justice*, 237-238.
[113] Peter Solomon, *Soviet Criminal Justice*, 264.

amended in 1927 and 1934, it remained the central pillar of Soviet criminal policy for over three decades.[114]

Analyzing the content of the 1922 criminal code, Solomon argued that it "represented a distinct blend of tradition and novelty".[115] Moreover, the author explained that the jurists who prepared the draft of the 1922 code borrowed theoretical concepts from the Imperial Russian Criminal Code of 1903. At the same time, the principles embodied in the 1922 code, the penalties provided, and the definitions given to certain offences reflected a new approach to criminal law.[116]

Addressing the transformations which Soviet penologists brought to criminal legislation in the 1920s, scholars of Soviet law have highlighted three main principles of its application: analogy, judicial discretion, and class favoritism.[117] The first principle, expressed by the Latin maxim *nullum crimen, sine lege*[118], prohibits the criminalization of an action which the law did not explicitly describe as an offence.[119] The second principle, judicial discretion, entitled judges to use their "revolutionary consciousness" in sentencing individuals. Finally, the third principle, which supported discrimination by class, allowed judges to assign penalties based on the past or present social status of the convicted offender.[120] This principle was repealed in 1927.

[114] William E. Butler, *Soviet Law (*London, Butterwortths, 1988), 298. Major modifications were made in 1927. In accordance with the 1924 Soviet constitution, criminal law was a uniform federal law. However, the individuals Soviet Republics maintained their own criminal codes. In reality, the criminal codes of the individual republics reproduced the content of the RSFSR code with minor changes.
[115] Peter Solomon, *Soviet Criminal Justice*, 27.
[116] Peter Solomon, *Soviet Criminal Justice*, 27-28.
[117] Peter Solomon, *Soviet Criminal Justice*, 31; Vladimir Gsovski, "New Substantive Criminal Law" in *Government, Law and Courts in the Soviet Union and Eastern Europe*, Vladimir Gsovski and Kazimierz Grzybowski eds., (New York: Frederick A. Preager, 1959), 935.
[118] No crime without a [previous] law.
[119] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 935.
[120] Peter Solomin, *Soviet Criminal Justice*, 32-33.

Scholars have emphasized that the Soviet penologists who compiled both the code of 1922 and especially the one of 1926 approached the definition of crime under Soviet law as social phenomenon.[121] This thesis, developed by Enrico Ferri, states that the antisocial nature of infringements requires the use of punishments as measures of social defense. Subscribing to the idea of crime as a social danger, Soviet legal scholars have moulded criminal law to protect the interest of the ruling party.[122]

Criminal legislation incorporated the idea of how the purpose of criminal law is to protect the state and the legal order established by the socialist government.[123] Consequently, economic and counterrevolutionary offences became the cornerstone of the regime's survival.[124] The former enabled the Soviet government to maintain the economic order imposed under NEP. Accordingly, Soviet criminal law persecuted as economic offences: speculation, failure to fulfill a contractual obligation with a public office or enterprise, violation of any state monopoly (especially in industry), and failure to pay taxes. By criminalizing these acts, communists aimed to ensure the efficiency and productivity of industry and commerce.[125]

The category of counterrevolutionary offences provided for actions which were considered to have political motivations. As Vladimir Gsovski observed, the 1922 penal code defined counterrevolutionary "any acts to be directed toward the overthrow, undermining, and weakening"[126] of the Soviet regime. In 1926 this definition was expanded to include "acts directed toward the weakening of the economic, political, and

[121] Vladimir Gsovski, "New Substantive Criminal Law", 926-927.
[122] Vladimir Gsovski, "New Substantive Criminal Law", 927. Ernico Ferri, Italian criminologist and sociologist. His theories had exercised a strong influence on the majority of the penal codes enforced in Europe between the two World Wars.
[123] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 928.
[124] Peter Solomon, *Soviet Criminal Justice*, 28.
[125] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 949-950.
[126] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 947.

national conquests"[127] of the socialist revolution. By 1926, the term covered all acts which threatened the external security of the USSR.[128]

Article 58 of the 1927 Soviet criminal code stated fourteen specific crimes as being counterrevolutionary. These included treason (art. 58-1a,b,c), armed uprisings with the goal to seize power (art. 58-2), espionage (art. 58-6), undermining of state industry (art. 58-7), anti-Soviet and counterrevolutionary propaganda and agitation (art. 58-10), non-responding to a counterrevolutionary activity (58-12).[129] Studying the provisions of article 58, scholars have emphasized the broad terminology which was used to define the acts deemed as counterrevolutionary.[130] In light of this, Robert Conquest argued that, especially the officers of the Soviet secret police draconically interpreted the article 58.[131] In his literary depiction of the Soviet Gulag system, Aleksandr Solzhenitsyn mentioned that article 58 "…summed up the world not so much through the exact terms of its sections as in their extended dialectical interpretation". Moreover, Solzhenitsyn questioned rhetorically:

> [W]ho among us has not experienced its all-encompassing embrace? In all truth, there is no step, thought, action, or lack of action under the heavens which could not be punished by the heavy hand of Article 58…".[132]

[127] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 947.
[128] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 947.
[129] Hugo S. Cunningham, *http://www.cyberussr.com/rus/uk58-e.html#58-1a*. (accessed April 2011).
[130] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union, 947. See also Robert Scharlet, "Stalinism and Soviet Legal Culture"; Robert Conquest, *The Great Terror. A Reassessment* (Edmonton, University of Alberta Press, 1990); Aleksandr Solzhenitsyn, *The Gulag Archipelago 1918-1956. An Experiment in Literary Investigation* (New York, Harper and Row, 1985).
[131] Robert Conquest, *The Great Terror. A Reassessment*, 283.
[132] Aleksandr Solzhenitsyn, *The Gulag Archipelago*, 27.

CHAPTER 3: The Sovietization of the Romanian Judicial and Criminal Law.

From "Bourgeois Justice" to "People's Justice"

> The great achievements made by our people, after their liberation from the Nazi yoke, with the help of the heroic Red Army, changed the political, social, and economic structure of the country…By grabbing the political power and the economic monopoly form the hands of the exploiting classes, [and by] establishing the regime of people's democracy, our people could, for the first time in its history to create a new Justice, [a justice] meant to serve the working people and the highest goals of humankind. The reform of Justice, as proposed by the Romania Communist Party and received with irresistible joy by the working people, meant the end of the bourgeois justice in our country and the foundation of a true justice, the people's justice.[133]

In this chapter I will approach the Sovietization of criminal justice in communist Romania as a process of transition from the traditional, "bourgeois", system of justice, to the "people's justice". In this sense, I will focus my argument on two levels: institutional and legislative. First, I will discuss the administration of justice in Romania from 1945 to 1953. Second, I will approach changes in the text of the penal legislation of Romania from 1936 to 1953. More precisely, I will analyze the continuities and the ruptures concerning the system of penalties and the distinction between offences against internal and external state security. Despite the fact that the penal code of Romania was subsequently amended after 1936, I will focus on the changes which were made by the communist government in order to determine exactly what the Sovietization of criminal meant.

3.1. The administration of criminal justice in Romania from 1945 to 1953

The judiciary played a central role in the consolidation of the communist regime in Romania. Consequently, two main stages of its evolution can be identified: the first

[133] "Procesul de creare al Justiţiei Populare" [The making process of People's Justice] *Justiţia Nouă* 2 (1949): 175.

lasting from 1945 to 1947 and the second from 1947 to 1953. During the first stage, the judiciary's activity facilitated the political consolidation of the new regime by legitimizing the repressive politics which were employed against the Communist Party's political opponents. The second stage was characterized by an intensified process of reorganizing the Romanian judicial system according to the Soviet model.

Starting in 1945, the communists made significant changes in the administration of justice. An important measure was the purges which were initiated during the mandate of Lucreţiu Pătrăşcanu, the minister of justice. In April 1945, at the orders of A. Vyshinsky, Pătrăşcanu dismissed over 1000 magistrates to make room for individuals loyal to the communist regime.[134] This change of personnel was implemented by Law no. 640 of December 1944 which overturned the "irremovably and stability of judges".[135] Law 640/1944 not only provided for the filtering of the judiciary, but also increased the regime's control over the court's activity. By taking the judges' careers in hand the regime could easily interfere in the court's decision-making process. More important, the qualifications of the newly appointed judges, mostly workers and activists who attended a school of law for only six months, were undeniably lower compared with the greater legal education of the judges' form the interwar period.[136]

The main institutional "innovation" during this stage was the introduction of the People's Tribunals which followed the example of the revolutionary tribunals in the RSFSR. These tribunals were granted jurisdiction over all cases which involved crimes of war. Although the Armistice Agreement of 1944 provided for the arrest and trial of war

[134] Dennis Deletant, *Communist Terror in Romania*, 74.
[135] "Legea nr. 640 privind suspendarea inamovibilităţii şi stabilităţii membrilor corpului judecătoresc" [Law no. 640 on the overturning of the irremovability and stability of judges] *Monitorul Oficial* 294 (1944).
[136] Călin Dragoş and Horaţius Dumbravă, "The Evolution of the Judicial System in Romania During the Past 60 Years", *Revista Forumul Judecătorilor* [Judges' Forum Magazine], 1 (2009), 124.

criminals and the dissolution of "Fascist-type" organizations, Romanian politicians objected to the implementation of this provision.[137] Therefore, the establishment of the People's Tribunals was a major achievement for communists. Law no. 312 of April 21, 1945 on the "prosecution and punishment of those guilty of the country's disaster or war crimes", pointed towards the personnel of the former regime to be tried for "having committed crimes of war".[138] More precisely, the text of the law defined as being guilty of war crimes those individuals who:

> […] put [themselves] into the service of [H]itlerism or [F]ascism and contributed by [their] actions to the accomplishment of their political purposes or to the servitude of the country's economic life to the detriment of the Romanian people [sic].[139]

As Deletant explained, the communists employed an anti-Fascist crusade as a pretext for removing influential political figures and military officers from public life.[140] If, for some of the individuals arrested under the provisions of Law 312 there was solid incriminating evidence, for others proof was lacking.[141] Law 312 stated that war criminals were to be judged by a panel which consisted of two professional judges and seven representatives of the people.[142] Although the People's Tribunals were supposed to operate only until September 1, 1945, in some cases sentences were pronounced until mid-1946. More

[137] Dennis Deletant, *Communist Terror in Romania*, 58. In particular, Iuliu Maniu, the leader of the Romanian National Peasant Party opposed the establishment of war tribunals.
[138] "Legea nr. 312 pentru urmărirea şi sancţionarea celor vinovaţi de dezastrul ţării sau de crime de război" [Law no. 312 on the taking down and the sanctioning of those guilty for the disaster of the country and war crimes] *Monitorul Oficial* 94 (1945), art. 1-2.
[139] "Legea nr. 312 pentru urmărirea şi sancţionarea celor vinovaţi de dezastrul ţării sau de crime de război" [Law no. 312 on the taking down and the sanctioning of those guilty for the disaster of the country and war crimes] *Monitorul Oficial* 94 (1945), art. 1-2.
[140] Dennis Deletant, *Communist Terror in Romania*, 58-59.
[141] Dennis Deletant, *Communist Terror in Romania*, 75.
[142] Legea nr. 312, art. 12.

important, the communists continued to deem the regime's possible political opponents as "Fascists" even after the abolishment of the People's Tribunals.[143]

After 1947 a series of institutional reforms redefined the structure of the Romanian judicial system. Law no. 341 of December 5, 1947, which came into effect on March 19, 1948, brought a major modification which concerned the composition of the court system. The main new element of this law was the introduction of people's assessors to all judicial panels. As mentioned by Pătrăşcanu during a meeting of the Council of Ministries, the introduction of people's assessors was essential for "simplifying the mechanism of justice".[144]

People's assessors were individuals with no legal training who were either elected by trade unions and professional organization in the city or appointed directly by their community in rural areas. In the case of the military tribunals, the people's assessors were selected from among the officers. Beginning in 1948, Romanian legal discourse presented the people's assessor as an indispensable part of the court's decision-making process. Articles published in the journal *Justiţia Nouă* emphasized that people's assessors could "bring the court the unaltered vision of justice as understood by the popular masses".[145] Moreover, the people's assessors "judged" the social context of each case which was brought before court in order to "help" judges understand the criminal act outside of the legal framework of the file.[146] The need to be able to differentiate between

[143] The text of the penal legislation is an example in this sense.
[144] "Stenograma raportului lui Lucreţiu Pătrăşcanu la şedinţa Consiliului de Miniştri, la care participă pentru ultima oară ca ministru al justiţiei, şi care are ca subiect reforma în justiţie pe timpul mandatului său" [Transcript of the Report of Lucreţiu Pătrăşcanu presented during a meeting of the Council of Ministries, which he attended for the last time as the Ministry of Justice, concerning the reform of justice during his mandate] in E., Denize, and C., Mâţă, *România comunistă. Statul şi propaganda, 1948-1953* [Communist Romania. The state and the propaganda, 1948-1953] (Iaşi: Editura Polirom, 2005), 219-221.
[145] "Magistratul şi asesorii populari" [The magistrate and the people's assessors], *Justiţia Nouă* 7 (1948): 5.
[146] "Noua structură a justiţiei" [The new structure of justice system], *Justiţia Nouă* 5 (1948): 112.

the reason behind the criminal acts of the working class and those of the "exploiting class" was the central argument for having people's assessor in courtrooms.

In an article published by *Justiţia Nouă* one year after the promulgation of Law 341, Avram Bunaciu, the Minister of Justice, tried to encourage the populace to adhere to the principles of people's justice and stand for election as assessors:

> […] the second election [campaign] for people's assessors, which will take place this February, must mean a step forward on the road of straightening the people's Justice; the working people of our country must show special vigilance when electing the people's assessors.[147]

In a similar article, Bunaciu argued that public participation in the court decision-making process was the duty of "each working person from cities and villages".[148]

The enforcement of the communist constitutions (1948 and 1952 respectively) brought new modifications to the structure of the judiciary. Decree no. 132 of April 2, 1949 stated that the first objective of the judiciary was the "defense of the socio-economic and state structure" of PRR. In this way, individuals' rights and interests were placed on a secondary level. In accordance with the provisions of the 1948 constitution, the Romanian judicial system consisted of both people's courts and tribunals, and the PRR's Supreme Court.[149]

Laws no. 5, 6, and 7 of June 19, 1952 instituted a uniform system of judicial institutions. These laws adapted the judiciary to the new territorial-administrative organization of Romania. They also defined the role of each actor who was involved in the court's decision-making process. The new structure of the judiciary consisted of

[147] "Procesul de creare al Justiţiei Populare" [The process of creating the People's Justice], *Justiţia Nouă* 2 (1949): 175.
[148] "Alegerile de asesori populari. Pas însemnat pe calea făuririi justiţiei populare" [Election for people's assessors: an important step toward building the people's justice] *Justiţia Nouă* 2 (1949): 298.
[149] "Decretul nr. 132 pentru organizarea judecătorească" [Decree no. 132 on the organization of the judiciary] *Buletinul Oficial* 15 (1949).

district and regional people's tribunals, and the Supreme Tribunal as the highest court of the country. Military Tribunals, Railway Transport People's Tribunals, and Maritime People's Tribunals were also part of the judiciary, but they were courts which had special jurisdiction.[150]

Military tribunals had jurisdiction over the cases dealing with offences against internal and external state security since 1938.[151] The enforcement of this judicial practice was a consequence of the establishment of a state of siege. It was in this context that King Carol II operated his coup d'état. Therefore, although it was not a novelty to the Romanian legal practice, the manner in which the communist government approached this practice was a different issue. Article 1 of Law 7/1952 stated that the aim of military courts was first to "defend the PRR's social structure and state order, the relentless fight with the people's enemies [sic]".[152] Its second aim was and to "straighten up the discipline and the fight ability" of the Romanian armed forces.[153]

Cases which were heard by military tribunals were subject to investigations conducted by the secret police. According to decree 221/1948, which officially founded the *Securitate*, this institution had jurisdiction over all cases which involved threats to the existence of the regime and the security of the people. Moreover, the provisions of decree 221 clearly stated that only the *Securitate*'s officers could conduct investigations concerning any offences committed by the "enemies of the people".[154] Before an individual could be brought to trial, a military prosecutor legally had to legally classify

[150] "Legile nr. 5, 6 , 7 pentru organizarea judecătorească" in *Legi şi decrete privind organizarea justiţiei în PRR* [Laws and decrees on the organization of justice in PRR] (Bucureşti: Editura de Stat pentru Literatură Economică şi Juridică, 1952).
[151] "Decretul nr. 856", [Decree no. 856] Monitorul Oficial 34 (1938), art. 3. The decree provided for a state of siege.
[152] Legea nr. 7/1952, art. 1.
[153] Legea nr. 7/1952, art. 1.
[154] Marius Oprea, *Bastionul Cruzimii*, 57-58.

these offences as crimes or misdemeanors. First established in 1948, the Procuracy was tasked with supervising all "public personnel and citizens alike compile with criminal laws".[155] However, because it was placed under the control of the Ministry of Justice, the activity of this agency lacked consistency. The Military Procuracy had a special status because it was subordinated to both the Ministry of Justice and Armed Forces. The constitution of 1952 changed the status of the Procuracy. Although the agency became independent of the Ministry of Justice, the Deputy Prosecutor General was made directly responsible to the Grand National Assembly and the Council of Ministers.[156] The establishment of the Procuracy, albeit not within the focus of this thesis, is an interesting example of legal transplant from the USSR to Romania and other communist countries.[157]

3.2. Romanian criminal legislation until 1948. The penal code of 1936 and its subsequent amendments

In 1919, when the Greater Romania[158] was established, the newly formed state inherited various criminal codes and special laws which were in force in the provinces that united with the Old Kingdom.[159] It was only in 1936 when a new penal code, known as *Codul penal Regele Carol al II-lea* (*The criminal code of King Carol II*), unified the

[155] The 1948 Constitution of the PRR, art. 95.
[156] The 1952 Constitution of the PRR, art. 75-76.
[157] For details about the legal transplantation of the Soviet Prokuratura into Czechoslovakia and Poland, see Tony P. Marguery, *Unity and Diversity of the Public Prosecution Services in Europe. A Study of the Czech, Dutch, French, and Polish Systems* (Groningen: Rijkuniversiteit Groningen, 2008).
[158] In 1918, at the end of World War I, Transylvania, Bukovina, and Basarabia united with the Old Kingdom of Romania. The Greater Romania refers to the new enlarged territory of Romania from 1919 to 1940.
[159] Raoul Gheorghiu and Anton Wekerle, "New Substantive Criminal Law. Romania" in *Government, Law, and Courts in the Soviet Union and Eastern Europe*, vol. 2, ed. Gsovski Vladimir and Kazimierz Grzybowski. After the union of 1919, the following criminal codes remained in force: the Criminal Code of 1864 in the Romanian Old Kingdom; the Hungarian Criminal Codes of 1878 and 1879 on major and petty offenses in Transylvania, the Banat, Crishana, and Maramureş; the Austrian Criminal code of 1852 in Bukovina; and the Russian Criminal Code of 1885 in Basarabia (by June 1919 this code was replaced by the Romanian Criminal Code of 1864).

criminal legislation of Romania. The code came into effect on January 1, 1937. Article 1 of the 1936 code stated that: "[N]o one can be punished for an act that was not expressly considered an offence by law when it was carried out".[160]

This code provided a different system of penalties for crimes than for misdemeanors. It also differentiated between punishments for common and political offenders. Moreover, for crimes which were committed by common offenders the code provided forced labor (from 5 to 25 years, or for life) and rigorous confinement (from 3 to 20 years). Misdemeanors were subject to correctional confinement (from 1 to 12 months) and fines. In a political case, the offender could receive rigorous confinement (from 5 to 25 years, or for life), or strict confinement (from 3 to 20 years) if charged with crime. Political misdemeanors were sentenced to simple confinement (from 1 to 12 months) and fines.[161] Articles 28-38 of the code explained that these differentiations of offences were reflected in the severity and the conditions of detention.[162] This system of penalties revealed a nineteenth-century understanding of political offence. According to Robert Goldstein during the course of the nineteenth century political prisoners received preferential treatment over common criminals because, in the majority of the European states, political offences were considered acts motivated by noble ideals rather than selfish personal interest of ordinary crimes.[163] This preferential treatment meant that political prisoners were not forced to work and were also allowed to wear their own

[160] *Codul penal Regele Carol al II-lea*, Book I, Title I, art. 1.
[161] *Codul penal Regele Carol al II-lea*, Book I, Title III, art. 22-23.
[162] *Codul penal Regele Carol al II-lea*, Book I, Title III, art. 36, 37, 38.
[163] Robert Goldstein, *Political Repression in 19th-Century Europe* (London: Croom Helm, 1983), 85, quoted in Polymeris Voglis, "Political Prisoners in the Greek Civil War, 1945-50: Greece in Comparative Perspective", *Journal of Contemporary History* 37, no. 4 (2002): 526.

clothing. They were also given the right to keep personal values such as books and to receive more visits and packages.[164]

Perhaps most important, neither the death penalty nor the general confiscation of property was included in the penal code of 1936. They were introduced in 1938 as extraordinary forms of punishment. The first was provided as the highest measures of punishment for treason and highway robbery with murder, the latter was a facultative measure for a number of 61 crimes.[165]

Title I of the 1936 code, "Crimes and misdemeanors against the state", clearly differentiated between external and internal state security.[166] Therefore, the code addressed these issues in two separate sections. The section concerning external security prescribed acts aimed at endangering the existence or the interests of the nation such as high treason and espionage. The code defined these acts as crimes. The section on internal security distinguished between acts directed against the existing constitutional and social order respectively. More precisely, the 1936 code mentioned that any attempts at changing the government through violent interventions as acts against the existing constitutional order (art. 207).[167] As punishment for these acts, the code stipulated rigorous confinement which could last from 3 to 5 years. Concerning possible acts against the social order, article 209 described a broad category of misdemeanors which were aimed at causing economic and social instability.[168] Correctional imprisonment was ser as the punishment for these acts. However, when the acts described by article 209

[164] Robert Goldstein, *Political Repression*, 86-88, quoted in Polymeris Voglis, "Political Prisoners in the Greek Civil War, 526.
[165] *Codul penal Regele Carol al II-lea*, Book I, Title III, art. 24-25. See also the 1938 Constitution of Romania, art. 15-16.
[166] *Codul penal Regele Carol al II-lea*, Book II, Title I, art. 184-223.
[167] *Codul Penal Regele Carol al II-lea*, Book II, Title I, art. 207.
[168] *Codul Penal Regele Carol al II-lea*, Book II, Title I, art. 208.

were committed through violent means, the punishment was changed into rigorous confinement.[169]

During the interwar period, Romanian criminal legislation concerning the internal security of the state was used mainly against extreme left and right wing movements. Whether it was the communists or the members of the Romanian Legionary Movement, the perpetrators of crimes or misdemeanors against the internal security of Romania were punished in accordance with the provisions of the 1936 penal code. Nevertheless, beginning in 1938 when Romania became a personal dictatorship under the personal rule of King Carol II and continuing during the rule of Marshal Ion Antonescu (1940-1944), the character of political persecution changed. More precisely, political repression became subject to an extraordinary legislation which allowed for discretionary arrests especially against those individuals who were suspected of legionary or communist activities. These could also be made against those who refused conscription into the army (mostly members of the Protestant church).[170]

3.3. Romanian criminal legislation from 1948 to 1953

In February 1948 the communist government amended and republished *Codul penal Regele Carol al II-lea* as *Codul penal al Republicii Populare Române.*[171] Ciprian Raţiu, the Secretary General of the Ministry of Justice, explained the government's official position on the amendment of the 1936 penal law in an articled published in

[169] *Codul Penal Regele Carol al II-lea*, Book II, Title I, art. 209.
[170] For statistics of cases trialed by military courts in Romania during this period see, Petrache Zidaru, *Tribunalele militare. Un secol şi jumătate de jurisprudenţă 1852-2000* [Military tribunals. A century and a half of jurisprudence] (Bucureşti: Universul Juridic, 2006), 344.
[171] *The penal code of the People's Republic of Romania*, *Monitorul Oficial*, 48 (1948). Text oficial cu modificările pînă la data de 1 decembrie 1960, urmat de o anexă de legi penale speciale [The Penal Code. Full text revised until October 1, 1960 with an appendix containing a series of special penal laws] (Bucureşti: Editura Ştiinţifică, 1961).

Justiţia Nouă in October 1948. [172] Raţiu argued that all the reforms carried out by the popular democratic government, including the reform of justice, were the result of the "new social structure of the Romanian society". Furthermore, Raţiu described the legislative policy-making as a process which reflected the policies of the new government, whose objective was the "establishment of an adequate legislative framework for the socioeconomic realties of the times".[173]

When analyzing the amendments which the communist brought to criminal law, one can identify the introduction of certain Soviet-type jurisprudential innovations. First, the criminal code of 1948 gave offences a new definition. Moreover, the code approached criminality as a predominantly social phenomenon. Article 1, paragraph 3 of the code defined as any actions that could jeopardize the security of the state or the social order as socially dangerous.[174] Accordingly, Romanian jurists explained that:

> [o]nly the individual still unaware of his role in building the socialist regime, or the enemy of this regime, both cases of capitalist societies' remnants [sic], may become an offender, in other words, be guilty of committing a socially dangerous act.[175]

These "enemies of the regime" could include a broad category of individuals who were "preparing to strike in any field" from the external and internal state security to the economic sector.[176]

Second, in 1948 the code stated the principle of "no punishment without a previous penal law", except for those acts which endangered state security.[177] However,

[172] "Noua politică legislativă" [The new legislative policy] *Justiţia Nouă* 1 (1948): 1. In addition to the judicial reform, the author mentioned the agrarian reform, the electoral reform, and the currency reform.
[173] "Noua politică legislativă", 1.
[174] *The penal code of the PRR*, Book I, Title I, art. 1.
[175] "Intenţia şi culpa în dreptul penal" [Intention and negligence in criminal law] *Justiţia Nouă* 9 (1949): 1004.
[176] "Rolul justiţiei în trecerea de la capitalism la socialism" [The role of justice during the transition from capitalism to socialism] *Justiţia Nouă* 3 (1949): 304.

by 1949, the communists introduced retrospective punishment for all socially dangerous acts.[178] In addition to this provision, the criminal legislation of the PRR conformed to the principle of punishment by analogy. Consequently, acts which were considered dangerous to society could be punished by analogy even if not explicitly included in the text of the criminal law.[179] As presented in the journal *Justiţia Nouă*, the amendments brought to the text of the criminal law enjoyed a highly positive reception from judges. For example, in an article published in 1949, a Romanian judge defined these changes as "impetuously necessary as the result of the huge economic and political transformations of the PRR".[180]

Concerning the system of penalties, the main modification at this time was the introduction of the total confiscation of propriety as a mandatory form of punishment. Initially this was allowed only for cases of high treason and embezzlement of public money. However, by 1950 this sanction could be applied also for crimes against the security of the PRR and economic crimes.[181] It is important here to emphasize that the total confiscation of propriety as a form of punishment affected not only the individual sent to prison, but also the lives of the members of his/her entire family.

The 1948 code retained the traditional differentiation between external and internal state security. High treason and espionage were the main acts which had been defined as crimes against the external security of the state.[182] The law associated these two types of crimes with the transmission of state official documents to foreign powers or

[177] *The penal code of the RPR*, Book I, Title II, Chapter I, art. 4.
[178] Decree no. 187/1949, *Monitorul Oficial* 25, (1949).
[179] *The penal code of the PRR*, Book I, Title I, art. 1.
[180] "Pe marginea modificărilor aduse legiurilor penale" [On the modifications brought to penal laws] *Justiţia Nouă* 9 (1949): 1028.
[181] *The penal code of the PRR*, Book I, Title III, Section II, art. 25, 30-34.
[182] *The penal code of the PRR*, Book II, Title I, Chapter I, art. 184-193 (referring to high treason) and art. 194-194-5 (referring to espionage).

the cooperation with secret ("counterrevolutionary" from 1953) domestic or international organizations.[183] The concept of "counterrevolutionary organizations" was unknown to Romanian law prior to this date.

The section addressing the internal security of the state maintained the distinction between acts classified as threats or possible threats to the constitutional and social order respectively. However, this part of the code suffered important modifications. Because the monarchy was abolished, the articles which described and incriminated attacks on the person or the family of the king lost their validity. Therefore, articles 204, 205, 206, and 208 of the 1948 penal code were repealed. Although substantially revised, article 207 and article 209, which considered acts of terrorism and plots against the social order respectively remained in force.[184] In 1953, article 209 was expended to include "counterrevolutionary sabotage" as a special category of economic crimes/offences aimed at undermining the social order of the PRR.[185]

The *Final Report* of the CPADCR stated that the Penal Code was the regime's only officially endorsed means of repression.[186] Because the penal code was a public document, each of its amendments had to be published in the newspaper *Buletinul Oficial*.[187] Several decrees issued either by the Council of Ministries or by the Ministry of Interior provided for the so-called "administrative measures" completed the coercive nature of the regime.[188] By administrative measures, one must understand the decisions of

[183] *The penal code of the PRR*, Book II, Title I, Chapter I, art. 194(1).
[184] *The penal code of the PRR*, Book II, Title I, Chapter I.
[185] *The penal code of the PRR*, Book II, Title, I, Chapter II, art. 209(1-4).
[186] *Raportul final al CPADCR*, 189.
[187] Article 193(1), as amended by decree no. 63/1955 was the only section of the code keep secret. This article criminalized "acts against the working class and the revolution committed in office during the regime bourgeois regime". It was kept secret because its retrospective nature was a violation of the provisions of Geneva Conference (1955).
[188] *Raportul final al CPADCR*,

assigning individuals to forced labor camps or making them targets of population dislocation and home confinement decisions.[189] These provisions, which deprived citizens of a series constitutional liberties and rights, were secret because of their highly repressive nature. Due to their extraordinary character, the "administrative measures" were not used in judicial practice.[190]

Although issues such as the law on overturning of the irremovability and stability of judges, and the extraordinary jurisdiction given to military tribunals in hearing political offences were not unknown to Romanian judicial practice prior to 1945, the communist take-over brought a series of changes concerning the administration of justice. The practice of having people's representatives included in judicial panels and the distribution of cases involving state security to secret police, military prosecutors, and military tribunals were the main "innovations" I have focused on in this chapter. The introduction of people's assessors is an important aspect for understanding both the ideological and pragmatic dimensions of the Communist Party's "reform of justice". By having people's assessors in courtrooms the communist government officially stated that justice belonged in the hands of the people. However, this argument has to be questioned in the light of the fact that, by 1952, the election of people's assessors were held only in factories, state institutions, and collective farms; all of which were under the Party's control. The "people's justice" was, in reality, the justice of the Communist Party. The implications of the second aspect: the broad jurisdiction given to military tribunals and

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http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf, 195. See also M. Oprea, *Bastionul Cruzimii. O istorie a Securităţii* (1948-1964), 126.

[189] *Raportul final al CPADCR*, 196.

[190] Nicoleta Ionescu-Gură, *Dimesiunea represiunii din România în regimul comunist. Disclocări de persoane şi fixări de domiciliu obligatoriu* [The dimension of communist repression in Romania. Population dislocations and home confinement] (Bucureşti: Corint, 2010), 9.

the Procuracy in hearing offences against the state will be addressed in the following chapter.

In order to observe how and to what extent the criminal legislation of Romania was Sovietized, I have focused on three aspects: the introduction of a new definition of criminality (socially dangerous), the application of retrospective punishment and punishment by analogy respectively. Due to their Soviet origin and in the light of the fact that all three were unknown to Romanian legislation prior to 1948, I argue that these are example of legal borrowing form the criminal legislation of the USSR to the criminal legislation of the PRR. In the next chapter I will emphasize how the new definition of criminality blurred the distinction between common and political offences.

CHAPTER 4: Communist Romanian Criminal Justice in Operation

Current historiography of twentieth-century authoritarian and totalitarian regimes portrayed political offence as a symptom of these regimes' politics. The French Revolution brought a major change concerning the definition of political offence. More precisely, it substituted the person of the monarch with the abstract notion of the state as the object of a political offence. As Otto Krichheimer has observed, this change of focus led to a distinction between offences against the existence of the state (external security) on the one hand, and offences against the government and political institutions (internal security), on the other. The former category referred to attacks on the nation's security, while the latter to acts aimed at overthrowing the existing constitutional order.[191]

The advent of the interwar authoritarian regimes challenged this approach to political offence. In an era of ideological and political antagonism, dictatorial regimes obscured the difference between external and internal state security by connecting political repression with the protection of the state and the established order.[192] However, authoritarian regimes prosecuted their political opponents as enemies of the nation while communist regimes oppressed them for being obstacles in the construction of socialism.[193] Particularly in countries where the communist movement lacked mass support, the establishment of the communist regime and the implementation of its revolutionary social policies depended to a large extent on the repression of all real or potential enemies.[194] However, because communist legislation portrayed acts that might

[191] Otto Kirchheimer, *Political Justice*, 32-33.
[192] Otto Krichheimer, *Political Justice*, 42.
[193] Otto Krichheimer, *Political Justice*, 41-42.
[194] Polymeris Voglis, "Political Prisoners in the Greek Civil War", 539.

hinter the political and economic transformation of the society as "socially dangerous",[195] it can be argued that the traditional definition of political offence lost its validity.

In this chapter I will address the process through which acts of plotting against the social order were legally classified as offences. Moreover, I will focus on cases brought before the Military Tribunal of Iaşi region between 1948 and 1953. I will provide insights on the manner in which the authorities entitled to investigate, prosecute, and sentence individuals accused of plotting against the social order of the PRR approached these acts. I aim to scrutinize the extent to which these institutions sustained the repressive nature of the regime.

4.1. Article 209: "plotting against the social order"

The *Final Report* of the CPADCR emphasized that the acts prescribed under Book II, "Especially [sic] crimes and misdemeanors", Title I, "Crimes and misdemeanors against the state", constituted the pillars of judicial repression in communist Romania.[196] Data from a census published by the CPADCR reveled that thirty percent of all individuals imprisoned in Romania between 1945 and 1989 were accused of violating the provisions of article 209.[197] Accordingly, Romanian scholars have stressed that article 209 was the cornerstone of the phenomenon of political imprisonment.[198] This article prescribed penalties for acts of "plotting" against the social order. Overall, article 209 incriminated only two types of acts: disseminating propaganda and establishing or working for secret organizations either domestic or international. However, due to the vague language used, it succeeded in covering a wide range of conducts. These included

[195] Vladimir Gsovski, "New Substantive Criminal Law. The Soviet Union", 927.
[196] *Raportul final al CPADCR*, http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf, 190.
[197] *Raportul final al CPADCR*, 212.
[198] Marius Oprea, *Bastionul Cruzimii. O istorie a Securităţii* (1948-1964), 120.

propaganda against the government carried out by violent means and also any type of help to the military, the paramilitary, and the Fascist domestic or international organizations, which strived to overthrown the "democratic and economic order of Romania".[199]

In the 1948 version of the penal code retained the definition of acts of plotting against the social order as misdemeanors. However, as punishments for disseminating propaganda in favor of these organizations, individuals could suffer by correctional confinement for a time of 3 to 5 years.[200] Accordingly, article 209 dictated a punishment of forced labor for 15 to 25 years for establishing or becoming members of an association "aiming to overthrown the social order".[201] In accordance with Title III of the code both penalties could be applied only for common offences. More important, forced labor was a form of punishment for crimes and not for misdemeanors.[202]

4.2. From acts of plotting against the social order to offences of plotting against the social order

The legal classification of a case played a crucial role in determining a defendant's fate. As I mentioned in the introduction of my thesis, the legal classification of an offence was a process which involved the participation of several important institutional actors: the *Securitate*, the Procuracy, and the court.[203] When analyzing the file of a former prisoner three documents stand out: the *Securitate*'s final report, the *Introductory Essay* made by the prosecutors, and the sentencing status. By analyzing

[199] *The penal code of the PRR*,, Book II, Title I. Chapter II.
[200] *The penal code of the PRR*, Book II, Title I, Chapter II, Line IV.
[201] *The penal code of the PRR*, Book II, Title I, Chapter II. Line III.
[202] *The penal code of the PRR*, Book I, Title III, Chapter II.
[203] Because my primary focus in this thesis is on judicial practices, I will not address the stages through which the secret police monitored and interrogated suspects.

these documents, I will aim to provide insight into the justice mechanisms which functioned in communist Romania. Due to the fact that the *Securitate*'s officers and prosecutors had to some extent similar attributions, namely to conduct investigations, I will discuss them together. Court hearings and sentencing status will be discussed sparely.

4.2.1. The *Securitate* and the Procuracy

Depending on the evidence collected during investigations, the *Securitate* decided if a person should be assigned to a forced labor camp or brought before the court.[204] The conclusions drawn by the *Securitate*'s officers at the end of the investigations were contextualized into a scenario. In establishing scenarios for acts of plotting against the social order, the *Securitate* usually began by presenting the stages through which the individual(s) under investigation decided to organize or become a member of a "subversive" organization. Special emphasis was put on the details which concerned the military or paramilitary goals of these groups. In drafting their reports the *Securitate*'s officers emphasized the subversive character of the organization under investigation and *suggested* that due to this reason the accused(s) should be put on trial for acts of plotting against the social order. Therefore, it can be read in the *Securitate*'s reports that:

> [B]y founding an association aimed at establishing contacts with the imperialist forces that were preparing to attack the PRR in order to overthrown the new form of government, [the name of the individuals that made the subject of the investigations followed] plotted against the social order ".[205]

In order to present the file before a judicial panel a prosecutor had to evaluate the evidence gathered during the investigations and from that establish its legal classification.

[204] Marius Oprea, *Bastionul Cruzimii*, 144.
[205] ACNSAS, Fond penal TMI, file 745, vol. I, 2.

The task of the prosecutor was to explain in the so-called *Introductory Essay* the legal reasons for sending the case to trial. This *Introductory Essay* had two parts. The first part began with the phrase "[A]ccording to the investigations made by the *Securitate*". The name of the offender(s), the acts for which he/she was under investigation, and the evidence collected against him/her followed.[206] The narrative which contained this information embodied judgmental arguments concerning the motives that led the offender to commit the acts which had been mentioned in the file. The social status of the offender(s) had a central role in this context. For example, in analyzing the file of one worker, the prosecutor wrote that this individual infringed upon the law because he "start to listen the whispers full of venom" spread by supporters of the previous government.[207] In a similar case involving a group of high school students who had set up an organization, the prosecutor noted that: "*Fraţia de Cruce*[208] was established by some misguided elements belonging in the school environment, which start to listen to the voices of the regime's enemies".[209] However, especially when the offender was a member of one of the former democratic parties, the prosecutor approached the file by stressing the "reactionary" political background of the accused.[210] In the second part of the *Introductory Essay*, the prosecutor legally classified the acts described in the file by concluding:

> [g]iven the fact that [the name of the individual considered followed] plotted against the social order by establishing a subversive association, which aimed to overthrown the socio-economic order of the PRR through violent means, [the accused] should be brought before the court in

[206] ACNSAS, Fond penal TMI, file 745, vol. II, 5.
[207] ACNSAS, Fond penal TMI, file 745, vol. II, 5.
[208] The Brotherhood of the Cross- the name of the organization;
[209] ACNSAS, Fond penal TMI, file 1068, 42.
[210] ACNSAS, Fond penal TMI, file 1970, vol. I, 3.

> accordance with article 209 of the penal code and trialed for *crimes* of plotting against the social order.[211]

Although the penal code defined acts of plotting against the social order as misdemeanors, cases heard at the Military Tribunal of the Iaşi region demonstrated that these types of acts were regularly trialed as crimes. Approaching the evidence in accordance with the suggestions in the *Securitate*'s report, prosecutors legally classified acts of plotting against the social order as *crimes* and indicated that judges ought to approach them alike. A possible explanation for this approach can be the fact that crimes were subject to harsher penalties. An intriguing feature of the "people's justice" can be observed within this context. Because until 1952 the Procuracy was subordinated to the Ministry of Justice, prosecutors who theoretically had to supervise the judicial activity, in fact acted as part of the same system.

4.2.2. Sentencing the "enemies of the people's"

A court hearing began by introducing the members of the panel, the prosecutor, the accused(s), the offence judged, the incriminating articles, the lawyer, and the witnesses. A clerk recorded the entire procedure. The next phase was to hear the witnesses. If they were not present, the court dismissed their testimonies. Then, the president of the court opened the floor to the prosecutor who had to present his *Introductory Essay*. In some cases, the defense objected to the legal classification suggested by the prosecution and claimed a new one. Neither the offence(s) itself nor the guilt of the accused was contested. Finally, the court asked the accused how he responded to the accusations, and then the panel retired to deliberate.[212] When they returned to the

[211] ACNSAS, Fond penal TMI, file 745, vol. I, 7-8. Emphasis mine.
[212] ACNSAS, Fond penal TMI, file 650, vol. I, 26.

courtroom, the judges presented the result of their deliberation and argued for the motives which sustained their decision.

The sentencing status emphasized how the panel had issued the decision "in the name of the law" by a unanimous vote.[213] Due to the presence of the people's assessors in the panel, the emphasis put on the unanimous nature of the decision can be explained as an allusion to a punishment given in accordance with the will of the people.

An article published in the journal *Justiţia Nouă* mentioned that judges should use their "revolutionary consciousness" in sentencing individuals.[214] This meant that they should see if the evidence compiled in the file "constitute obstacles to the people's fight for the abolition of exploitation" and the building of socialism.[215] In a similar article a Romanian judge advised his co-workers to focus on the context of the offence by applying the dialectic method, especially during case hearings.[216] Understanding the context of the offence meant highlighting the defendant's class position based on his/her former and current occupation, the property they owned, and the parental origin. Although these were additional pieces of information in the file, and not directly linked with the infringement, the judges were required to consider them as evidence.

The narrative of the sentencing status began by giving a brief account of the socio-political realities of the PRR and of the achievements accomplished by the new regime. The accused and the offence(s) for which he/she was trialed were stated second in the text of the sentencing statement. It was in this section that the "class enemy" received a name and his acts were presented as offences:

[213] ACNSAS, Fond penal TMI, file 650, vol. I, 27.
[214] "Procesul de creare al Justiţiei Populare" [The process of creating people's justice] *Justiţia Nouă* 2 (1949): 177.
[215] "Procesul de creare al Justiţiei Populare", 177.
[216] "Adevarul material şi lucrul judecat" [The formal truth and Res Judecata] *Justiţia Nouă* 3 (1950): 360.

> [T]he members of this subversive organization [the name of each person followed] were also members of the young section of the former National Peasants Party, whose meetings they continued to frequent although from August 1947, when these types of gatherings were banned (…).[217]

The court had to "individualize the punishment" according to "the act committed and the causes that led the defendant to commit the crime",[218] including his/her social background and personal motivations.[219] As clearly stated in an article published in *Justiţia Nouă* by Leonid Miller, adviser at the PRR's Ministry of Justice, this type of judicial practice was of Soviet origin.[220] Moreover, Miller explained how the Soviet jurisprudence differentiated between the "objective side" and "the subjective side" of the crime as follows:

> [T]he objective side of crime consists of: a socially dangerous result [the result of the crime], the activity through which this result is reached and the causal relationship between the criminal conduct and its result.
> The subjective side of crime consist of the perpetrator's state of mind regarding the socially dangerous consequences of his [criminal] activity.[221]

Promoting this judicial practice, Romanian legal scholars argued that judges should place emphasis on the subjective side of the infringement when determining the defendants' degree of guilt. This was because: "[T]he more the individual is aware of the dangerous consequences of his acts, the guilt is even grater".[222] Consequently, the sentencing statement mentioned that the accused who disobeyed the law was "aware of the illegality of his/her acts".[223] The final part of the sentencing status announced the penalties to be

[217] ACNSAS, Fond penal TMI, file 1970, vol. I, 4.
[218] "Despre deliberare şi pronunţare" [About deliberating and sentencing] *Justiţia Nouă* 3 (1951): 321.
[219] "Despre deliberare şi pronunţare", 321.
[220] "Infracţiunile contrarevolutionare în dreptul penal sovietic" [Counterrevolutionary Crimes in the Soviet Criminal Law] *Justiţia Nouă* 7 (1949): 760.
[221] "Infracţiunile contrarevolutionare în dreptul penal sovietic", 762.
[222] "Intenţia şi culpa în dreptul penal" [Intention and negligence in criminal law] *Justiţia Nouă* 9 (1949), 1002-1003.
[223] ACNSAS, Fond penal TMI, file 1970, vol. I, 88.

imposed. In accordance with the provisions of article 209, the penalties were forced labor and correctional confinement. This shows that the distinction between political and common offences was blurred. Although the code of 1948 retained the traditional differentiation between penalties for common and political offences, individuals trialed for acts of plotting (a political offence) received punishments for ordinary offenders. Because the form of punishment was forced labor, the regime succeeded in not only in penalizing its opponents, but also in forcing them to work for the system.

An aim of this thesis was to demonstrate that the repressive nature of the regime was upheld not by the status of criminal laws, but by rather the manner in which the agencies enforced the law and how they interpreted it. In this chapter I have demonstrated this argument by focusing on article 209 which criminalized various acts of plotting against the social order and required they be punished as misdemeanors. My selection of this article was not random. I focused on it because, according to Romanian scholarship article 209 was the cornerstone of political repression exercised through judicial mechanisms during the communist regime. In the light of this, I have shown how acts of plotting against the social order came to be regulated as offences against the social order. To be more accurate, I have done this by analyzing documents issued by the main actors involved in the process through which acts such as this one were criminalized and brought before the Military Tribunal of the Iaşi region. This approach has allowed me to observe that the legal classification of an offence was established by the conclusions of the *Securitate*'s officers. The fact that the *Introductory Essay* written by prosecutors began with the phrase "[A]ccording to the investigations made by the *Securitate*" supports this claim. Moreover, it demonstrates that in deciding the legal classification of

the evidence compiled during investigations, prosecutors constructed their argument by subscribing to the results of the investigations of the secret police rather than formulating new conclusions.

Conclusion

The topic of justice, and particularly criminal justice and its administration during the communist years in Romania is a complex issue because to the various aspects one must consider. In this thesis I have approached the Romanian reform of justice carried out by the communist government within the context of the communist take-over (1944-1947) and Sovietization of Romania (1948-1953). These were stages of a period of transition toward a new social and constitutional order. During this transition, the Communist Party approached the administration of justice as a means to obtain legitimacy. As I have emphasized, this was a transition from a traditional and legitimate form of government -a monarchy- to a new social and constitutional order -the People's Republic of Romania. Although from 1938 one cannot technically speak of a monarchy in Romania in the traditional sense, the Romanian kingdom was only abolished in 1947.

In current Romanian scholarship, many books have been written about the establishment of the communist regime, the "Socialist transformation" of the country, and the repressive nature of the communist politics. One of the main arguments in these works is that the Communist Party ruled society through a series of policies aimed at creating a "new social order" as well as a "new man". Like any other system of governance, the communist government of Romania implemented its policies through various social and institutional policies. However, because one of the regime's primary declared goal was the improvement of people's standard of living, the Communist Party "reserved" its right to dictate how the "new man" should be born, educate, and fed, or where he should live. Perhaps most important, they also dictated how the "new man" should react to the Communist Party's projects of social engineering. Accordingly, the

Party also retained the right to punish any individuals who opposed or could oppose its politics.

The process of subordinating justice to the Communist Party's political goals began in 1944, when Lucreţiu Pătrăşcanu, the first communist how hold a ministerial portfolio in Romania, became the Minster of Justice. During his mandate, Pătrăşcanu's created the opportunity for the Part to interfere in the court's decision-making process. Two important measures must be mentioned: the purge of the judiciary (1945) and the introduction of people representatives into judicial panels (1948). The establishment of People's Tribunals (1945) with jurisdiction over war crimes also must be stated in this context. Although this judicial practice was not of Soviet origin, the establishment of these tribunals is relevant to my thesis for understanding how the judiciary facilitated the political consolidation of the communist regime.

Both promulgation of a new constitution and the amendment of the Penal Code in 1948 were significant steps toward the Sovietization of the country. In this context, I have approached the transplantation of legal practices and concepts developed in the USSR to Romania. More precisely, I have focused on two complementary lines of research: the institutional re-organization of the judiciary and the modifications brought to criminal legislation. Concerning the first issue I presented the stages through which the communist government instituted a uniform judicial system. Concerning the second issue, legal changes, I showed the continuities and the ruptures in the text of penal legislation of Romania from 1936 to 1948.

Despite that the Penal Code of 1936 was subsequently amended since its enforcement, the "innovations" brought by communists changed its nature. Though

political repression carried out through judicial mechanisms was not unknown to Romania's previous regimes (the Carlist and Antonescian dictatorships), I have shown what the Sovietization of the criminal legislation meant. Accordingly, I have emphasized three main issues. First, that the code approached criminality as a predominantly social phenomenon. Any action(s) which might have jeopardized the constitutional and the social order of the PRR became "socially dangerous". Second, that the code introduced the principles of retrospective punishment and punishment by analogy. Third, that the system of penalties suffered several modifications. As an example, I showed how the total confiscation of property became a mandatory form of punishment.

Although the 1948 code retained the traditional differentiation between external and internal state security, I have highlight how the section "Crimes and misdemeanors against the state" was substantially revised. As I have stated, the modifications brought to criminal legislation followed two complementary goals. On the one hand, the repeal of the provisions which were aimed at defending the previous form of government, on the other, the introduction of new concepts such as "counterrevolutionary organizations" and "counterrevolutionary sabotage". Incorporated for the first time into Romanian criminal law in 1953, the term "counterrevolutionary" was linked with certain acts which could jeopardize both external and internal state security.

To understand the complex web of communist-type of criminal justice administration, one has to take into consideration the actors which were involved in this process. This included the *Securitate* (in cases involving offences against the state), the Prosecutor's office, the bar, the courts, and the accused. In this thesis I have focused only on the institutional actors. For an individual to be convicted of an offence against the

social and constitutional order of the PRR, each of the institutional actors played an important part. First, in order to build a case, the Securitate had to conduct investigations and to collect evidence (whenever possible). When there was "solid" evidence, the case would then precede the prosecutor's office. The task of a prosecutor was to decide if the act(s) investigated by the *Securitate* constituted offences, be it crime(s) or misdemeanor(s) in accordance with the criminal legislation in force. Finally, the judges pronounced the sentence of the offence under consideration. In this thesis I have focused on the process through which acts of plotting against the social order were brought as offences before a military court. This approach has allowed me to observe that the legal classification of an offence was established by the conclusions of the *Securitate*'s officers. In the light of this argument, I conclude that during the period which I scrutinized, the goal of the highly propagandized "reform of justice" carried out by the Romanian communist regime was to give legitimacy to the new political authority and also to determine individual(s) to comply with it, rather that creating a better justice system.

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