

# The Political Use of Capital Punishment in Communist Romania

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by

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## **Abstract**

This thesis aims to reveal the relationship between the death penalty and politics in Romania, throughout the communist period. It examines the legal framework, takes a statistical survey of the actual use, and provides examples in order to illustrate how the state's attitude towards capital punishment evolved.

The use of the death penalty was defined by frequent irregularities and the incoherent policies of a regime that transformed its own perpetuation in one of its main aims. This was especially the case when it was at its weakest, at the very beginning and then close to the end of its existence. The result was the use of the death penalty in a manner that was dictated by immediate political “needs” and reactions to specific events, rather than in relation to a coherent criminal policy, and thus was ultimately less influenced by ideology than one might expect.

Used in the Stalinist period both as a direct means to eliminate opponents and by the propaganda for its deterrent effect, as described in the first research chapter, the second research chapter provides evidence about how it slowly evolved to become a more refined political tool limited to the propagandistic use, during the 1980's. Ultimately, both chapters demonstrate that the legal provisions and their interpretation when put into practice highlight the politicization of the death penalty itself.

## Table of Contents

Introduction .....	5
I. Theoretical Framework .....	14
II. Ideology, Repression and the Death Penalty in Communist Romania between 1944 and 1969.....	23
II.1. Early Years.....	23
II.2. War Criminals .....	24
II.3. The Death Penalty Law in 1949 .....	27
II.4. The Abolitionist Attempt .....	31
II.5. Decree no. 318/1958, the Harshening of the Penal Code and Afterwards .....	33
III. Capital Punishment and Politics in Communist Romania after the Penological Reform in 1969	42
III.1. 1969. A New Penal Code.....	42
III.2. The Campaign against (Economic) Criminality.....	50
III.3. The Traitors.....	54
III.4. 1989 and the Abolition .....	57
Conclusions .....	60
Bibliography .....	63

## Introduction

Capital punishment has been abolished in Romania on 7 January 1990, a few days after the fall of the communist regime. Romania signed on 15 March 1990 and ratified on 27 February 1991 the Second Optional Protocol to the UN International Covenant on Civil and Political Rights and also ratified Protocol no. 6 to the European Convention on Human Rights in May 1994, documents concerning the abolition of the death penalty. According to Amnesty International, in 2011, 96 countries were abolitionist and two thirds of the countries in the world abolished capital punishment in law or in practice, which might be seen as a great advancement if we look no more than 35 years back, when only 16 countries were abolitionist for all crimes.<sup>1</sup> It is, thus, a legitimate question to ask how abolition happened around the world. Furthermore, it is worth remembering that on 28 July 2006 the Polish President Lech Kaczynski launched an appeal to the EU countries to reintroduce the death penalty.<sup>2</sup> A similar idea emerged in Romania in June 2011 when Senator Iulian Urban proposed the reintroduction of the death penalty.<sup>3</sup>

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<sup>1</sup> *Figures on the Death Penalty*, <http://www.amnesty.org/en/death-penalty/numbers>, accessed 21 January 2012.

<sup>2</sup> Ridvan Peshkopia and Arben Imami, "Between Elite Compliance and State Socialization: the Abolition of the Death Penalty in Eastern Europe", *The International Journal of Human Rights*, Vol. 12, No. 3 (June 2008), 353.

<sup>3</sup> Monica Ionita, "Iulian Urban Propune Pedepsa cu Moartea pentru Pedofilii ai caror Victime Decedeaza" [Iulian Urban Proposes the Death Penalty for Pedophiles who's Victims Die], *Romania Libera*, 21 June 2011, accessed 21 February 2012, <http://www.romanialibera.ro/timpul-liber/fapt-divers/iulian-urban-propune-pedepsa-cu-moartea-pentru-pedofilii-ai-caror-victim-decedeaza-228971.html>

I strongly believe that there are lessons to be learnt from the communist experience of capital punishment. Following Michel Foucault's warning<sup>4</sup> that the abolition of the death penalty should be related to a serious debate, given the popular support for death penalty, it is extremely important that its history is known both by specialists and the larger public. In addition to this some of the states still applying capital punishment are communist countries that we can better understand through the peculiarities of the death penalty in past communist regimes.

The history of capital punishment in communist Romania is largely unknown and is full of ambiguities. It is difficult to estimate how many people were executed and it is virtually impossible to do the same for those sentenced but not executed. Ignorance and mystification characterizes the public perception and mistakes abound in the few academic works, making what we know about it today even more uncertain.

Usually one pledges in favor or against the death penalty based on a different moral or utilitarian perspective. It is true that they intercalate sometimes: one can be a retentionist even if the death penalty's efficiency is still unproven while another can be an abolitionist even if it could be proven effective.<sup>5</sup> It is beyond the scope of this thesis to get into details or to pledge for one position or another. Nonetheless, I consider it a matter of academic honesty in studying capital punishment to state from the very beginning my position: I am an abolitionist. I am an abolitionist because I know of no statistical data that proves a relationship between the death penalty and crime rates, capital punishment tends to be arbitrary applied on a race, ethnicity,

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<sup>4</sup> Michel Foucault, "Against Replacement Penalties", in *Essential Works of Foucault. 1954-1984, Volume 3: Power*, ed. Paul Rabinow, (New York: The New York Press, 2000), 459-461.

<sup>5</sup> Stanislaw Frankowski, "Post Communist Europe", in *Capital Punishment. Global Issues and Prospects*, ed. Peter Hodgkinson and Andrew Rutherford, (Winchester: Waterside Press, 1996), 215-243.

class etc., criteria, and judicial errors can occur.<sup>6</sup> Furthermore, as this study will show, political circumstances often influence the regulation and use of capital punishment.

This thesis is not a Manichaean perspective that relates the death penalty with communism and abolition with its liberal enemy. This dichotomy is a simplistic and overrated way of looking at the history of capital punishment, as it has been proven by explicit developments such as the abolition of the death penalty in the GDR in 1987 and its extensive application in the US until the present day. The death penalty is immune to such distinctions.<sup>7</sup> Hence, its distinctiveness resides in characteristics that lie deeper in the history of capital punishment. Although for Western Europe this history is more or less known, this is not the case for the USSR and former East European communist countries, where capital punishment as a historical reality is barely known.

The history of capital punishment in Romania before the Second World War is not spectacular. Used intermittently in the first half of the nineteenth century, it followed an unusual path compared to other countries in this period. It was abolished in 1864 in the newly established Romanian state, with the exception of a few military crimes provided by the Military Code. Before the Second World War, several works were published on the topic. One of them condemned the practice of “shooting the detainees and fugitive prisoners by prison guards”.<sup>8</sup> Another book backed up abolitionism making a short history of capital punishment in the 19<sup>th</sup> century Romania, while its author was a survivor of an attempted political

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<sup>6</sup> Richard Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford: Oxford University Press, 1996), 907-908.

<sup>7</sup> Christian Boulanger and Austin Sarat (ed.), *The Cultural Lives of Capital Punishment. Comparative Perspectives* (Stanford: Stanford University Press, 2005), 31.

<sup>8</sup> Constantin Filiti, *Despre Impuscarea Osanditilor si Arestatilor Fugari [About the Shooting of the Detainees and Fugitive Prisoners]* (Bucuresti: Noua Tipographie Nationala, 1882).

assassination.<sup>9</sup> A few years before the prodigious jurist Vespasian V. Pella backed abolitionism in the context of the adoption of a new Constitution in 1923, important voices like the one of professor Ion Tarnoviceanu, the founder of Romanian criminology, supported capital punishment.<sup>10</sup>

All these contributions, most of them from legal scholars, show that the retention or abolition of the death penalty was open to an intellectual debate. A curious point is related to a law in 1924 (the *Marzescu Act*) that prohibited the activity of the communist party. A Western author, Stanislaw Frankowski,<sup>11</sup> is not the only one who erroneously records it as the moment when capital punishment was enacted against communist agitators. The law did not include such a provision and it was probably communist historiography and propaganda that inoculated this mystification.<sup>12</sup>

On 24 September 1938, law no. 3247 for the implementation of the new Penal Code of 1936 put the latter in accordance with the new Constitution of the newly established authoritarian regime of King Carol II on 28 February 1938:

Art. 15. Capital punishment applies during wartime according to the military code. Council of Ministers may decide the application of the dispositions of the previous paragraph during peacetime for assassination attempts directed against the king, members of the royal family, foreign state chiefs and dignitaries for reasons related to the functions entrusted to them, as well as for cases of robbery and murder and political assassinations.

<sup>9</sup> Constantin C. Angelescu, *Pedeapsa cu Moarte la Romani in Veacul al XIX-lea [The Death Penalty in 19<sup>th</sup> Century Romania]* (Bucuresti: Tipografia Inchisorii Centrale “Vacaresti”, 1927).

<sup>10</sup> Vespasian V. Pella, *Pedeapsa cu Moarte in Legatura cu Proiectul Constitutiei [The Death Penalty Related to the Project of the New Constitution]* (Bucuresti: Tipografia Curierul Judiciar, 1923).

<sup>11</sup> Frankowski, “Post-Communist Europe...”, 217.

<sup>12</sup> An example of this, through an intentionally vague statement, we can find in Iulian Poenaru, *Contributii la Studiul Pedepsei Capitale [Contributions to the Study of Capital Punishment]* (Bucuresti: Editura Academiei RS Romania, 1974), 74: “ulterior bourgeois penal laws...were more and more repressive, outlawing the communist party in 1924, repressing some crimes against public order through Marzescu law in the same year, modified in 1927 and 1933, when it became *Marzescu-Mironescu law*, through which were justified the *excusable killings* of the government during the strikes in Valea Jiului in 1929 and Grivita in 1933.”



During the Second World War, the fascist regime increased the number of capital crimes, including robbery, insurrection, rebellion, treason, espionage, and several other crimes, while the number of executions increased rapidly.<sup>13</sup>

This is the inheritance that the communist regime received from its predecessors, but as we know its aims were in general so different that almost everything related to the past had to be changed. The following study will show how capital punishment was interpreted, transformed and ultimately, politically used in communist Romania, while it will also seek to explain why the focus on the Romanian case.

The topic of capital punishment was taboo during the communist period. Nevertheless, an exotic appearance arose in 1974, a book called *Contributions to the Study of Capital Punishment* by Iulian Poenaru. Even though similar bibliographic appearances existed in Poland in the same period,<sup>14</sup> the local context was different and the exact circumstances in which this book appeared are yet to be established. The author was an attorney in Brasov<sup>15</sup> and published his book in 1974, providing a comprehensive survey of the situation of the death penalty in the world. Communist rhetoric overwhelms the book, but the conclusions somehow suggest an abolitionist position as a natural consequence of communist penal policy. Interestingly, a revised version of the book was published in 1992. In both versions, the period I am interested in (1944-1989) is covered only in a few pages, with a poor analysis of the legal framework.<sup>16</sup>

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<sup>13</sup> National Archives of Romania (NAR), Fond *Ministerul Justiției – Direcția Judiciară* [Ministry of Justice – Judiciary Unit], file no. 83/1944.

<sup>14</sup> Agata Fijalkowski, “The Abolition of the Death Penalty in Central and Eastern Europe”, *Tilburg Foreign Law Review*, 9 (2001), 74.

<sup>15</sup> Open Society Archives (OSA), HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>16</sup> The only difference is the removal of the parts that were evidently soaked with communist rhetoric in the first version.

Another book, a doctoral thesis published in 2008 by a jurist, Olivian Mastacan, *Capital Punishment in Romanian Law*<sup>17</sup>, refuses to deal with the communist period<sup>18</sup> which is summarized in two pages, less than that given to *Jesus Christ's sentence to death*, reproduced in appendix.

However, a deeper research was done by legal scholars in Western universities, addressing political aspects and also stressing their importance. There are two major studies that approached the death penalty in East European countries during the communist period. The first one, Stanislaw Frankowski's chapter in a book called *Capital Punishment. Global Issues and Prospects*,<sup>19</sup> is a comprehensive survey of the evolution of capital punishment in all the East European countries and relates it to the political context. The second study is an article, *The Abolition of the Death Penalty in Central and Eastern Europe*<sup>20</sup> by Agata Fijalkowski. Although focused on post-communist abolitionism like most of the approaches of legal scholars, it also makes an extensive summary of capital punishment during the communist period in Central-East European countries. It stresses that during the Stalinist period the death penalty was used to intimidate the population, becoming a political issue rather than a legal one. The study confronts one of the major problems of the research field – the lack of data – being based mainly on the data that Frankowski provides in his research.

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<sup>17</sup> Olivian Mastacan, *Pedeapsa Capitala in Dreptul Romanesc. Origini si Evolutie [Capital Punishment in Romanian Law. Origins and Evolution]*, (Targoviste: Bibliotheca, 2008).

<sup>18</sup> The same is the case in a book written by two policemen specialized in forensics: Gheorghe Popescu and Adrian Marcel Iancu, *Interzicerea Pedepsei cu Moartea – Garantie a Dreptului la Viata [Banning the Death Penalty – a Guarantee for the Right to Life]* (Craiova: Editura Sitech, 2009).

<sup>19</sup> Frankowski, "Post Communist Europe...", 215-243.

<sup>20</sup> Fijalkowski, "The Abolition...", 62-83.

Agata Fijalkowski also published a case study on Poland: Agata Fijalkowski, "Capital Punishment in Poland", in *The Cultural Lives of Capital Punishment...*, ed. Christian Boulanger and Austin Sarat, 147-168.

A case study on Slovakia was published by Robert Fico, former Minister of Justice in this country: Robert Fico, "The Death Penalty in Slovakia", in *The Death Penalty: Abolition in Europe* (Strasbourg: Council Of Europe Publishing, 1999), 117-129.

Evans also dedicated a chapter to the GDR in his *Rituals of Retribution...*.

It is also worth mentioning the comparative study of Andrew Scobell on China, USSR, Cuba and the GDR,<sup>21</sup> an article that I will come back to for the methodological discussion in the first chapter. Of course, most studies focus on the Soviet Union,<sup>22</sup> and their findings are relevant to the extent that the Soviet case was a role model. Several other studies focus on China or other communist countries from different parts of the world that I will not insist on.<sup>23</sup>

Thousands of people were killed by state actors after the communists took power in Romania in the mid-1940's until late 1950's, while less than three hundred were legally executed, as this study will show. Why did the regime choose this path for just a few of them and how did the two forms of state killing coexist? Although marginal compared to other repressive phenomena in the period, like extrajudicial executions or deaths in prison, especially from a quantitative point of view, I will assert that the legal provisions and their actual use successfully illustrate the politicization of the death penalty itself.

The contradiction between the ideological rejection of capital punishment, rooted in Marxism, and its almost continuous use in Romania from 1944 until 1989 is intriguing at the first sight. My aim is to analyze the mechanisms that lay behind both ideology and practice, and see how propaganda used the death penalty. Why was capital punishment continuously used and why couldn't communism lead to an *ideological abolition*? Was there a specific debate on

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<sup>21</sup> Andrew Scobell, "The Death Penalty under Socialism, 1917-1990: China, the Soviet Union, Cuba and the German Democratic Republic", *Criminal Justice History: An International Annual*, 12 (1991): 189-234.

<sup>22</sup> See Ger. P. Van den Berg, "The Soviet Union and the Death Penalty", *Soviet Studies*, vol. 35, no. 2 (Apr. 1983): 154-174; Konstantin Simis, "Death Penalty under Socialism", *Russia. A Quarterly Review of Contemporary Soviet Issues*, no. 1 (1981): 23-27; Marjorie Farquharson, "Four ex-Soviet States and the Death Penalty", *Helsinki Monitor*, no. 2 (2003): 89-100; William A. Clark, "Crime and Punishment in Soviet Officialdom. 1965-90", *Europe-Asia Studies*, vol. 45, no. 2 (1993): 259-279; Donald D. Barry and Eric J. Williams, "Russia's Death Penalty Dilemmas", *Criminal Law Forum*, vol. 8, No. 2 (1997): 231-258; George L. Kline, "Capital Punishment for Crimes Against State and Public Property in the Soviet Union Today", Interim Report to National Council for Soviet and East European Research, Bryn Mawr College, May 1987, accessed 27 December 2011: [www.ucis.pitt.edu/nceeer/1987-800-14-Kline.pdf](http://www.ucis.pitt.edu/nceeer/1987-800-14-Kline.pdf).

<sup>23</sup> Hong Lu and Lening Zhang, "Death Penalty in China: The Law and Practice", *Journal of Criminal Justice*, 33 (2005): 367-376; Andrew Scobell, "The Death Penalty in Post-Mao China", *The China Quarterly*, no. 123 (sep. 1990): 503-520.

the ideological issues or was the punishment used as in any other society, or in fact was used as a political weapon?

Starting from these research questions, the structure of my thesis will be dictated both by the evolution of the legal framework and the use of the death penalty, their essential influence being the politics of the period. In this way, the first chapter will be dedicated to the evolution of capital punishment between 1944 and 1969. In this period the death penalty was first enacted against war criminals, being extended in 1949 against vaguely defined *counterrevolutionary acts* like conspiracy, treason, economic sabotage, or even instigation, complicity or concealing the above mentioned. Although leading jurists attempted to abolish it in 1956, the number of capital crimes increased significantly in 1958. Specific in this Stalinist period were swift criminal proceedings and the use of the death penalty in an utilitarian manner. In other words, its transformation into a tool intended to help achieve political aims whether directly by suppressing people or by intimidating the others.<sup>24</sup>

A paradigm shift was possible only with the generational change of leadership, a peculiarity emphasized by some authors,<sup>25</sup> the old Stalinist ruler Gheorghe Gheorghiu-Dej being replaced after his death by the young Nicolae Ceausescu. This change was translated into a new Penal Code in 1969, which marked an important advancement. Firstly, the legal provisions were more attentively established and all the legal procedures seem to be substantially different from the previous period. The excesses of the Stalinist period were condemned, the political prisoners were released and the attention paid to the international organizations and norms increased. This was especially the case as Romania started to depart more from the Soviet guidance. However, capital punishment was still applied, in most cases

<sup>24</sup> Frankowski, "Post-Communist Europe...", 218.

<sup>25</sup> Scobell, "The Death Penalty under Socialism...", 218.

for aggravated murder. The 1980's, with the severe economic crisis Romania faced due to the political aims of the neo-Stalinist regime Ceausescu built, also left its mark on capital punishment. A second chapter will analyze the period 1969-1989 and its distinctiveness.

There are two major limitations of my thesis. The first is that although I will analyze the legal provisions concerning the death penalty for military offences, I will not fully address other questions regarding its application due to the scarcity of sources. However, some data found among common law cases and press show that, although the legal provisions stipulated the capital sentence for many offences, its use was very rare.

Secondly, and more importantly, the data that I gathered for the years 1944-1957 is not as rich and reliable as those available for the rest of the period. Although a Securitate document offers details for over 101 people sentenced and executed, it is obvious that the number was much higher. Meanwhile, the other documents do not mention any execution for the years 1944, 1945, 1947 and 1948, which I find impossible to believe.

## I. Theoretical Framework

In order to reconstruct a historical image of capital punishment, it is necessary to use a comprehensive approach, based on an interdisciplinary perspective. Some of the leading scholars of the field<sup>26</sup> have attempted to link legal studies with social sciences in order to reveal the intimate content of the death penalty. Advocating for methodological pluralism, Christian Boulanger and Austin Sarat stressed the importance of cultural analysis which in most cases needs deep historical insights. The theoretical framework constructed in this manner presumes an analysis of crime rates, socioeconomic indicators, regime type, religion and public opinion; all important in a different manner, on a case by case basis, in the peculiar context of each country. Meanwhile, they consider an aggregate theory always misleading, and therefore it has to be coupled with medium range theories which allow a closer examination of the individual cases.

My understanding of the influence of politics on capital punishment starts from the Weberian concept of *monopoly on the legitimate use of violence*,<sup>27</sup> the death penalty being thus the ultimate coercive instrument in the hands of the state. The legitimacy of the newly established communist regime in Romania faced many challenges and the use of capital punishment also has to be understood as a way to demonstrate its legitimacy. Going further, Otto Kirchheimer observed that law was dominated during the period of power seizure by a

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<sup>26</sup> Boulanger and Sarat, *The Cultural Lives of Capital Punishment...*

<sup>27</sup> Max Weber, "The Profession and Vocation of Politics", in Max Weber, *Political Writings*, ed. Peter Lassman and Ronald Speirs, (Cambridge: Cambridge University Press, 1994), 310-311.

*revolutionary legality*, when strengthening the state under the leadership of the Communist Party was the main purpose.<sup>28</sup> This was translated in swift criminal proceedings or in transforming the law into a means of the regime. The recurrence of the principle throughout the first half of the period is also worth analyzing.

Michel Foucault's *Discipline and Punish*<sup>29</sup> marked a paradigm shift in understanding how the punishment system evolved from the Middle-Ages until the modern times. It is helpful in understanding the judicial system of Western societies and, through all the comparisons that will arise, in analyzing communist criminal justice. Evidently, communist countries obeyed the new paradigm where executions were not public anymore, but subtle disciplinary mechanisms indirectly inoculated into the social body. But there have also been some peculiarities: unlike liberal jurisprudence, the *disciplinary penalty*, which developed in communist countries evaluated individual behavior through mixed rules defined by laws and normativity, be it political or societal, and the study of both is relevant. Although his references to modern totalitarianisms were rare, if we follow the Foucauldian paradigm, communism was the nadir of *disciplinary power*.<sup>30</sup> Meanwhile, if we agree that the totalitarian control was not that draconian, we can see that not everything was controlled, or that sometimes control was exercised indirectly. However, sometimes improvisation also lead the way, based on old pre-communist legal provision still in force, proving one more time a shift between communist ideology and real-socialist practice. It is also the case with capital punishment, which was politicized, but at a new level of manipulation and in a new manner that I will describe.

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<sup>28</sup> Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1961), 288.

<sup>29</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995).

<sup>30</sup> Roumen Daskalov, "Le Pouvoir Disciplinaire et le Socialisme d'Etat: Quelques Reflexions Accrochees a celles de Foucault", in *Hommage de l'Est a Foucault*, ed. Alain Brossat, (Nancy: Press Universitaire de Nancy, 1994), 111-121.

In a liberal society the legal discussion about capital punishment is carried around deterrence, retributive/restorative justice binomial, or consequentialism/utilitarianism concepts,<sup>31</sup> while for the communist societies their conceptual strength weakens and the discussion becomes more focused on ideology. We can talk about retribution in eliminating political opponents in the first decade after the war and also about the importance of general deterrence in the last two decades, but in my opinion they were constructed on a new conceptual basis which was defined by antagonistic concepts:

First and most important is the concept of the *New Man*. The new communist regimes in the region, most of them imposed by the Soviet Union, had to deal with a lot of *enemies*, many of them citizens from inside the state, be they newly defeated fascists or regular citizens, most of them lacking serious communist ideological convictions. However, one of the core ideas of the New Man concept was that individuals, regardless of their past, can be re-educated and made useful to the communist society. The archaeology of this idea takes us back to Marx, and, specifically related to the death penalty, to one of his youth articles where he clearly positions himself against capital punishment.<sup>32</sup> On a lower, political and public discourse level, the attitude changes, especially when the regime wanted to justify the inconsistent use of the death penalty with the general penological policy that was based on re-education - although re-education itself was often achieved through terror -.

I argue that this contradiction was surpassed mainly in two ways, but these three elements often intersected and this result can be confusing as we will see. Firstly, in the Stalinist period, Stalin's theory of the intensification of the class struggle in communist building societies was the perfect argument to accept capital punishment as an "exceptional and

<sup>31</sup> David Dolinko, "State Punishment and the Death Penalty" in *A Companion to Applied Ethics*, ed. R. G. Frey and C. H. Wellman, (Oxford: Blackwell, 2008), 75-87.

<sup>32</sup> Robert Bohm, "Karl Marx and the Death Penalty", *Critical Criminology*, vol. 16, No. 4 (2008): 285-286.



temporary measure”.<sup>33</sup> Later on, the human rights debate appeared and the communist countries were keen to show the achievements and advantages of their type of social order in this respect. The basic thesis of the communist approach to human rights is that individual happiness in the new social form is possible only through the achievement of happiness of the whole society. It results that the individual does not have to fight the state anymore, but to obey it, because it assures his welfare and it protects the happiness of the whole society.<sup>34</sup> Therefore there is certainly a deterrent element, but a retributive one is denied.

A second layer of the methodological discussion addresses another question that I posed in the introduction, which goes beyond the discourse, and is more rooted in reality than in the ideological discussion. How was capital punishment used as a political instrument? To answer to this I will refer to the debate that defined the historiography of communism, namely the one between totalitarian/revisionist schools. In the totalitarian approach, the almighty state rules every part of the political and social life through coercion and terror. This assertion is denied by the revisionists, who emphasize how certain aspects of life were more independent, or, I would say, negotiated with the state, which is also convergent with Foucault’s theory of disciplinary mechanisms. I will show that the use of the death penalty successfully illustrates frequent irregularities and an incoherent policy of the representatives of a regime who seemed to not always be aware of its aims or the ways to achieve them, as it transformed its own perpetuation into one of its main goals especially when it was weakest, at the very beginning and close to its end. This resulted in the use of the death penalty in a manner that was dictated by immediate

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<sup>33</sup> Frankowski, “Post Communist Europe...”, 215-243.

<sup>34</sup> Roman Wieruszewski, “The Evolution of the Socialist Concept of Human Rights”, *SIM Newsletter*, 1 (1988): 28-29. Particularly regarding the Romanian perspective, see: Ladislau Lörincz and Ioan Vida, “Umanismul Dreptului si Legislatiei Socialiste [The Humanism of the Socialist Law and Legislation]”, in *Umanismul Revolutionar si Drepturile Omului [The Revolutionary Humanism and Human Rights]*, ed. Victor Duculescu and Dan Mircea Popescu, (Bucuresti: Editura Politica, 1984), 137-152; Nicolae Ceausescu, *Drepturile Omului in Lumea Contemporana [Human Rights in Contemporary World]* (Bucuresti: Editura Politica, 1984).

“needs” and reactions to specific events, rather than a coherent criminal policy, and thus was ultimately less influenced by ideology than one might expect. However, the rules of the game were established by the state through legal provisions, so I find a balanced perspective offered by the two schools the most appropriate.

Andrew Scobell’s (a political scientist) comparative study<sup>35</sup> provides the analysis of four cases (USSR, China, Cuba and GDR) and draws some general conclusions regarding the relationship between the evolution of criminal justice systems in communist countries and the use of capital punishment. He differentiates five main stages:

1. *Terror stage*: seizure of power, elimination of political enemies through imprisonment and summary executions, gaining support of population - with emphasis on war criminals, counter-revolutionaries and reactionaries.
2. *Routinization or codification of repression* through establishment of a formal court system (the popular assessors' system in many communist countries); specialized bureaucracy and new Penal Codes. - The use of the death penalty decreases especially for political crimes and increases for violent crimes -.
3. *Readjustment*: after approximately 10 years, the penal code is subject to revision, usually after a new leader takes power, parallel to a period of economic liberalization, which increases economic criminality. It includes an increase in the number of capital crimes, especially economic offenses.
4. *Reform*. Radical reform of the criminal justice system meaning decriminalization of many offences, shortening of maximum prison terms and decreasing of the prison population. The influence of *human rights* concept and the public awareness of the

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<sup>35</sup> Scobell, “The Death Penalty under Socialism...”, 189-234.

barbaric character of the death penalty led to its abolition in the GDR in 1987 but in China for example, this step was skipped.

5. The last stage represents public demand for harsh measures in the context of high crime rates that characterize the leniency of the Penal Codes. One important aspect is the generational change in leadership, whose absence caused stagnation at some stages in certain countries.<sup>36</sup>

I will rely on this approach to verify to what extent the Romanian case fits, what its peculiarities were and/or if it can challenge this scheme.

The only major historical study about capital punishment, Evans' *Rituals of Retribution*,<sup>37</sup> provides a methodological approach on the death penalty from a historical perspective, based on Foucault's theory about modern *disciplinary mechanisms*, Norbert Elias' sociological perspective and Philippe Aries's history of mentalities.

Thus, I will try to closely trace the relationship of the death penalty with the state, as part of the disciplinary mechanism, in each of the two periods that divide my thesis by applying the following scheme:

1. I will describe the legal framework that established the capital crimes from two angles. Firstly I will identify the legal provisions in the form that they appeared in the Penal Codes and all the subsequent laws that amended them. I will also analyze the way they were presented to the public at large through commented and annotated versions of the Penal Code<sup>38</sup> or press, and contrast this with the context from the legal milieu and the debates that they

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<sup>36</sup> Scobell, "The Death Penalty under Socialism...", 216-217.

<sup>37</sup> Evans, *Rituals of Retribution*...

<sup>38</sup> Vintila Dongoroz et al., *Explicatii Teoretice ale Codului Penal Roman, 4 vol. [Theoretical explanations of the Romanian Penal Code, 4 vol.]* (Bucuresti: Editura Academiei Republicii Socialiste Romania, 1970); Teodor Vasiliu et al., *Codul Penal al Republicii Socialiste Romania, Comentat si Annotat, Partea Speciala, 2 vol. [Penal Code of the Socialist Republic of Romania, Commented and Annotated. Special Part, 2 vol.]* (Bucuresti: Editura Stiintifica si Enciclopedica, 1975-1977).

created among jurists, through documents from the Ministry of Justice.<sup>39</sup> Secondly, I will try to see the legal provisions through an evolutionary perspective, to track all the changes, both in the number of capital crimes and their content, that occurred from 1944 to 1989, contextualizing the penal policies with reference to the larger political framework and the eventual direct political interferences as they result from documents like the Securitate reports<sup>40</sup> or the transcripts of the meetings of the Central Committee of the Party.<sup>41</sup>

2. The second part of my analysis will address the application of the death penalty, including both sentencing and executing it. Besides legal executions, other swift executions took place, often without a trial and through other power representatives like ad-hoc tribunals or Securitate agents that were temporarily entitled to do executions on the spot. It is virtually impossible to have an account of the latter since no legal proceedings were followed, and my research will therefore not address them.

There are two main categories of sources that will allow me not only to see numbers, but also other important data. The penal registration form<sup>42</sup> is a short two-page form that the penitentiaries had to fill in for each detainee, throughout the communist period, and is the most complete set of data regarding executions. Among tens of thousands of detainees, the files of those executed were separately held. They were also separated into political and common prisoners. The forms provide the most extensive opportunity for counting the number of executed prisoners in communist Romania. They also contain basic and essential data like a brief criminal record, the type of crime for which they were sentenced, but also the *social*

<sup>39</sup> Archive of the Ministry of Justice (AMJ), unprocessed fond.

<sup>40</sup> Archive of the National Council for the Study of the Archive of “Securitate” (ANCSAS), Fond *Documentar [Documentary]*.

<sup>41</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie [The Central Committee of the RCP – Chancellery]*.

<sup>42</sup> Archive of The National Administration of Penitentiaries (ANAP), Fond *Fișe Matricole Penale [Penal Registration Forms]*, published online by The Institute for The Investigation of Communist Crimes and the Memory of the Romanian Exile, accessed 22 November 2011: [http://crimelecomunismului.ro/en/penal\\_registration\\_forms/](http://crimelecomunismului.ro/en/penal_registration_forms/).

*origin*, political status, and the execution day. Even the waiting time before the execution can be deduced. However, for the poor data period of late 1940's and 1950's their content will be compared with and completed by other sources such as lists compiled by the Securitate in 1957 with executed detainees for which a death certificate was not issued prior to that date because their death was not officially registered.

Unlike the penal registration forms, State Council's and Presidential Decrees<sup>43</sup> offer much more information, although they are available mainly for 1970's and 1980's. A person sentenced to death could address a clemency petition to the State Council prior to 1974 and after that year to the President. Alongside the clemency petition, there was a report issued by several state institutions: The Ministry of Justice, the Ministry of Interior, the Prosecutor General and the Supreme Tribunal. This report was designated to offer their perspective on the case and contained a recommendation for the State Council/President which is very important because in more than 90% of the cases it coincided with the final decision. The reports are a valuable archival source because they describe in detail the crime as well as the main legal aspects contained in the sentence, or the result of the psychiatric examination that most of the condemned were subjected to.

3. Finally, there are some cases that illustrate how the death penalty was related to politics and that will be best described through short (collective) biographical accounts: the condemnation of Ion Antonescu, the fascist ruler of Romania during the Second World War, that of Lucretiu Patrascanu, former communist leader and Minister of Justice, Ioan Mihai Pacepa, an advisor of Ceausescu and leader of the Department of Foreign Intelligence, who defected to the United States. I will also look at the members of the numerous groups, some of

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<sup>43</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete* [*The Central Committee of the RCP – State Council – Decrees*].

them executed, some others only condemned. This will include: the groups of the opponents in the mountains; *Pitești* group in the matter of the re-education in the prisons; *Ioanid* group of the authors of the “Great Communist Bank Robbery”; the leader of the group involved in the *Berne incident*, which attacked the Romanian embassy in Switzerland; the groups sentenced for economic crimes in the 1980’s, etc.

Another part of my research will include other specific aspects of capital punishment, like the manner of the executions, who was exempted, etc. However, one of the most interesting aspects of the phenomenon, that is the individual experience of the death penalty revealed by documents like clemency petitions and oral testimonies<sup>44</sup> - which would add a totally different perspective and require a different methodological approach - will not be addressed in this short thesis, thus leaving room for another in depth research project that I hope to pursue in the future.

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<sup>44</sup> For this perspective see: Scott Vollum, *Last Words and the Death Penalty: Voices of the Condemned and Their Co-Victims*, (New York: LFB Scholarly Pub, 2008).

## II. Ideology, Repression and the Death Penalty in Communist Romania between 1944 and 1969

In this chapter I will describe the evolution of capital punishment and the influence ideology had during the founding years of the regime, until 1969, when a new Penal Code was enacted. Starting with the punishment of war criminals and fascists, I will then describe how the death penalty was used for political reasons in a period when the regime had to consolidate and fight different *enemies*. With ups and downs like *The Death Penalty Law* in 1949 and the abolitionist attempt in 1956, it reached its climax in 1958-1959 after the enactment of Decree no. 318/1958.

### II.1. Early Years

The history of the death penalty in communist Romania begins with an ambiguity. According to an Amnesty International Report in 1989, capital punishment was introduced in Romania in 1949 “for a number of civil crimes; previously it could only be used in wartime.”<sup>45</sup> This information is supported by a document issued in 1956 by leading jurists and the Minister of Justice in Romania. According to the latter, capital punishment was abolished “after the liberation of the country”,<sup>46</sup> (i.e. 23 August 1944, when Romania joined the Allies) being subsequently reintroduced in 1945 for wartime crimes against peace and humanity and

<sup>45</sup> *When state kills...*, (Amnesty International: London, 1989), 195, in HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>46</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. D11069/1, 136.

abolished even for these crimes in 1947.<sup>47</sup> If the death penalty was abolished in 1944, as a draft report of the minister of justice, D. D. Negel also requested on 12 October 1944,<sup>48</sup> it was during the provisional governments that preceded the communist takeover. Unfortunately, no other reference related to this measure is available. However, this contrasts with the attitude communists had towards the death penalty from the very beginning. An undated and unsigned report, no. 483/1945, shows that on the trial files of the communists at the Martial Court, during the war there were two types of initials: M or C.<sup>49</sup> The interpretation of “political circles”<sup>50</sup> at the time is that General Nicolescu, the former commander of the Martial Court - in 1945 chief of the Royal Military House - used to suggest to the judges the sentences they had to give in these particular cases, this way. “This case will be publicized the following days and in the meantime the arrest of Gen. Nicolescu will be required, being considered a war criminal.”<sup>51</sup> Whether or not this case was true or just a fabrication, it is obvious that the communists tried to take a political advantage from it. Furthermore, the provisions related to war criminals were used for political purposes, while the non-political character of the 1949 law was a lie, as we will see.

## II.2. War Criminals

Those targeted by the regime in 1945 were vaguely defined, as we may see in law no. 50 on 15 January 1945 *Pentru urmarirea și pedepsirea criminalilor și profitorilor de razboi*

<sup>47</sup> ANCSAS, Fond Documentar [Documentary], file no. D11069/1, 136.

<sup>48</sup> NAR, Fond Ministerul Justiției – Direcția Judiciară, [Ministry of Justice - Judiciary Unit], file no. 83/1944, 74.

<sup>49</sup> “M” for *moarte* (death) and “C” for *alte condamnări* (other sentences).

<sup>50</sup> NAR, Fond Fond Comitetul Central al PCR - Secția Administrativ-Politică [The Central Committee of the RCP - The Political-Administrative Section], file no. 3/1945, 2.

<sup>51</sup> NAR, Fond Fond Comitetul Central al PCR - Secția Administrativ-Politică [The Central Committee of the RCP - The Political-Administrative Section], file no. 3/1945, 2.



[For the pursuit and punishment of war criminals and profiteers] and law no. 312 on 21 April 1945 *Pentru urmarirea si sanctionarea celor vinovati de dezastrul tarii* [For the pursuit and penalization of those guilty for the country's disaster]: "...those guilty for ordering or committing collective or individual repressions for political or racial purposes against the civil population (art. 1e)",<sup>52</sup> but ultimately "those who served fascism and hitlerism and contributed through their own deeds to the achievement of the political and economic purposes of fascism against the interests of the Romanian people (art. 1o)."<sup>53</sup> Retribution and elimination of the political opponents were the most important characteristics of the death penalty in this period.

Finally, the above mentioned laws actually targeted the former political enemies of the communists, the fascists. For this, the Romanian communists established a new judiciary system, which included Public Accusers, and People's Tribunals, very often appointing laymen with no legal training, but loyal to the regime, like former underground communist fighters<sup>54</sup> during the interwar period.<sup>55</sup> In spite of that, some authors claim that there was a consensus in the People's Tribunals to avoid death sentences after the 28 capital sentences in the first trial, in May 1945, were commuted by the Council of Ministries.<sup>56</sup>

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<sup>52</sup> "Law no. 312 on 21 April, *Pentru Urmarirea si Sanctionarea celor Vinovati de Dezastrul Tarii* [For the Pursuit and Penalization of Those Guilty for the Country's Disaster]", *Monitorul Oficial [Official Monitory]*, 24 April 1945, Part I, 3362.

<sup>53</sup> "Law no. 312 on 21 April, *Pentru Urmarirea si Sanctionarea celor Vinovati de Dezastrul Tarii* [For the Pursuit and Penalization of Those Guilty for the Country's Disaster]", *Monitorul Oficial [Official Monitory]*, 24 April 1945, Part I, 3362.

<sup>54</sup> The Romanian term for this is *ilegalisti*, deriving from the period when the Communist Party was illegal.

<sup>55</sup> Andrei Muraru, "Legislation and War Criminal Trials in Romania", in *New Europe College, Stefan Odobleja Program Yearbook 2009-2010*, ed. Irina Vainovski-Mihai, (Bucharest: New Europe College, 2010), 129.

See also: Maria Andreea Cojocariu, "Subordinating Justice in Communist Romania: The Sovietization of the Romanian Criminal Justice System (1945-1953)", (MA Thesis, Budapest: CEU Budapest College, 2011); Tiberiu Dianu, "The Romanian Criminal Justice System", in *Legal Reform in Post-Communist Europe. The View from Within*, edited by Stanislaw Frankowski and Paul B. III Stephan, (Dordrecht: Martinus Nijhoff Publishers, 1995), 257-275.

<sup>56</sup> Muraru, "Legislation and War Criminal...", 140.

Thus, certain exceptions were applied in 1948, based on decree no. 1017 on 31 May, when evidence about the pardoning of more than 10 people sentenced to death exist.<sup>57</sup> The authorities claimed that “after August 23, 1944, a large amnesty has been granted”<sup>58</sup> but these persons were exempted because of their crimes of high treason or espionage. “Now, when our country has a popular social order, when war is over and the relations of Romania with all its neighbors are of good vicinity, sincere friendship, and mutual support, it is time that they [i.e. the condemned] should be pardoned...”<sup>59</sup> They were all Hungarian citizens and their commutations were demanded by the Hungarian government as it did a similar act regarding several Romanian prisoners.<sup>60</sup> In this case politics prevailed, since the basis of these actions is actually a *gentlemen’s agreement* between Romanian and Hungarian governments during the war, whose regulation was discussed in August 1943 and apparently extended after the war.<sup>61</sup>

The eight, respectively fifteen capital crimes provided by the two laws are part of a legal process quite common in all Central-East European countries after the war, especially Germany and its allies. In most of the countries a lot of executions were recorded: 1700 executions in Poland, 180 executions in Hungary and no less than 2680 death sentences in Bulgaria.<sup>62</sup> Apparently, few persons were executed in Romania for war crimes. Following a show trial in which 16 capital sentences were passed, the former head of state, Ion Antonescu and three of his collaborators, Mihai Antonescu, Gheorghe Alexianu and Constantin Z. Vasiliu were shot in a filmed execution on 1 June 1946. Three other executions took place between

<sup>57</sup> NAR, Fond Ministerul Justiției – Gratieri, [Ministry of Justice - Pardons], file no. 518/1948.

<sup>58</sup> NAR, Fond Ministerul Justiției – Gratieri, [Ministry of Justice - Pardons], file no. 518/1948, 32.

<sup>59</sup> NAR, Fond Ministerul Justiției – Gratieri, [Ministry of Justice - Pardons], file no. 518/1948, 32.

<sup>60</sup> NAR, Fond Ministerul Justiției – Gratieri, [Ministry of Justice - Pardons], file no. 518/1948, 44.

<sup>61</sup> NAR, Fond Ministerul Justiției – Direcția Judiciară, [Ministry of Justice - Judiciary Unit], file no. 34/1943, vol. I, 32-35.

<sup>62</sup> Frankowski, “Post-Communist Europe...”, 219.

1951 and 1953 for crimes against humanity.<sup>63</sup> However, even if little evidence was identified, the numbers for Romania are too disproportionate, therefore impossible to believe. Furthermore, in 1968 the authorities decided, following the complaints of the relatives, to register the death of 1406 dead prisoners for whom a death certificate was never issued between 1946 and 1958. According to three special reports, 101 of them were sentenced to death and executed while the other 1305 people died during prosecution or in prison.<sup>64</sup>

Extrajudicial killings were also part of the communist practices, especially in prisons, but the number of the condemned is also difficult to establish and are not part of this research. The figures advanced by researchers and memory activists are various, ranging from 500.000 between 1948 and 1964 (Gheorghe Boldur-Latescu) to 15.000-20.000 roughly for the same period (Ion Ciupea and Stancuta Todea).<sup>65</sup>

### II.3. The Death Penalty Law in 1949

As Otto Kirchheimer put it, “doctrinal disquisitions on the law's lasting normative validity mushroomed”<sup>66</sup> in the period of power seizure, or *revolutionary legality*, when *Partiinost*’ (party and proletariat interests) prevailed. The fight against fascists, but also against other types of political opponents like counter-revolutionaries and saboteurs continued and *required* the existence of the death penalty. Although in the amended Penal Code enacted on 27 February 1948 capital punishment was not included, its provisions were very important for the transformation of the Penal Code into a political tool. One of the most important legal

<sup>63</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, author’s computing.

<sup>64</sup> Dorin Dobrinu, *Listele Mortii [The Lists of Death]* (Iasi: Polirom, 2008), 65.

<sup>65</sup> Dorin Dobrinu, *Listele Mortii*, 18, 20.

<sup>66</sup> Otto Kirchheimer, *Political Justice...*, 288.

principles, non-retroactivity of the law, was suspended for some safety measures, and in the 1949 version of the Penal Code it was totally ignored. Moreover, “the crimes that are considered to endanger the society can be punished even if they are not encoded as crimes in the legal provisions.”<sup>67</sup>

On 13 January 1949, *Legea nr. 16/1949 pentru sanctionarea unor crime care primejduiesc securitatea Statului si propasirea economiei nationale* [Law no. 16/1949 for the penalization of some crimes that endanger the State’s security and the prosperity of the national economy], the so-called *Legea pedepsei cu moartea* [Law of capital punishment] was enacted. Several capital crimes were established, some of them crimes against the state: treason, passing state secrets and “any kind of conspiracy against internal or external security of the People’s Republic of Romania”,<sup>68</sup> and other economic: destroying industrial assets and infrastructure, arson, or “knowingly failure or willfully negligent fulfillment of service duties.”<sup>69</sup> On top of that, instigation, complicity, concealing or preparing the crimes above led to the same punishment. The last article of the law stipulated that all the cases were to be trialed by Military Tribunals.

Lawyers in the county of Ilfov declared - according to Securitate informants - that its provisions were too strong and such a law did not exist even in the USSR,<sup>70</sup> where capital punishment was abolished in 1947 during peacetime, until 1950.<sup>71</sup> The new law’s extremely

<sup>67</sup> Vladimir Tismaneanu, et. al., *Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania. Raport Final* [The Presidential Commission for the Analysis of the Communist Dictatorship in Romania. Final Report] (Bucuresti: Humanitas, 2007), 189.

<sup>68</sup> “Legea nr. 16/1949 pentru Sanctionarea unor Crime care Primejduiesc Securitatea Statului si Propasirea Economiei Nationale” [Law no. 16/1949 for the Penalization of the Crimes that Endanger State’s Security and the Prosperity of the National Economy], *Official Bulletin*, 15 January 1949, Part IA, 550-551.

<sup>69</sup> “Legea nr. 16/1949 pentru Sanctionarea unor Crime care Primejduiesc Securitatea Statului si Propasirea Economiei Nationale” [Law no. 16/1949 for the Penalization of the Crimes that Endanger State’s Security and the Prosperity of the National Economy], *Official Bulletin*, 15 January 1949, Part IA, 550-551.

<sup>70</sup> ANCSAS, *Fond Documentar* [Documentary], file no. 13209, vol. 3, 139.

<sup>71</sup> Van den Berg, “The Soviet Union and the Death Penalty”, 159.

unclear content spread terror among public servants, as illustrated by an informative Securitate report. According to the informants, employees in petrol extraction industry, airports, railways and other professional categories were terrified; opposition politicians believed that some events prompted the authorities to appeal to such measures, since “strong laws are always a sign of weak governments.”<sup>72</sup> Iancu Ianculescu, a former liberal, declared to an informant that he will “put a sign on his door that at that house is a contagious disease”<sup>73</sup> and A. Alexandrini, the former Minister of Finance also declared that “nowadays it is better to stay inside your house and talk to no one”,<sup>74</sup> while two merchants considered that it is meant to scare people or it is only designed to be applied to those already imprisoned.<sup>75</sup>

However, the official press saluted the passing of the law and the way it was received by the working class during the propagandistic presentations that were held in factories. The Prime Minister, Dr. Petru Groza, stressed that: “By giving this instrument in the hands of the authorities, we emphasize our determination to protect our institutions, to protect the order of the People’s Republic of Romania, making to understand anyone who conspires against this order, against this Republic, that there is no forgiveness and no oblivion.”<sup>76</sup> The death penalty was meant to intimidate not only the political opposition, but the whole population. In this respect, the legislation regarding capital punishment was part of a general trend concerning penal legislation.

The data regarding executions between 1949 and 1957 are again poor and unreliable, penal registration forms recording very few executions. Other facets of the death penalty, like the behavior the saboteurs Aurel Rozei, Dumitru Nichita, and Nicolae Vasilescu had before

<sup>72</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 11069/1, 136.

<sup>73</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 11069/1, 137.

<sup>74</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 11069/1, 137.

<sup>75</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 11069/1, 138.

<sup>76</sup> “The Speech of Mr. Prime Minister, Dr. Petru Groza”, *Scanteia*, 14 January 1949, 5.

their execution were depicted by a 1952 report signed by the renowned Colonel Nicolae Doicaru,<sup>77</sup> chief of Securitate in the county of Constanta:

When he (Nichita Dumitru) was announced by the prison chief to prepare for his “transfer”, he realized that he is going to be executed, which resulted from his face expression and the kiss he exchanged with prisoner Cernatescu, as well as from his entreaties...

After the van left the prison, Nichita Dumitru was trembling and looking down while Rozei Aurel, pulling his cap over his head, said no word. Meantime, I observed that Vasilescu Nicolae paid attention to the van’s route, trying to see where they are taken, through the driver’s window. When he saw that the van gets out of town, one could see on his unrecognizable face that he was terrified.<sup>78</sup>

Decree no. 199 on 12 August 1950 grouped all the economic crimes stipulated in law no. 16/1949 under the name “sabotage of the development of the national economy” and there is evidence regarding the execution of one person for this type of crime in 1952.<sup>79</sup> In 1953, decree no. 202 re-defined the latter crime: Article 209 provided *undermining of the national economy* as a capital crime, “when the actions determined or could determine severe consequences.”<sup>80</sup> The actions were: “undermining national economy through the use of state institutions or factories, or the sabotage of their normal activity, as well as using or sabotaging them for the benefit of their ex-owners or interested capitalist organizations.”<sup>81</sup>

Following the adoption of these amendments, records show that between 1952 and 1957 six people were executed for treason, one for plotting against state interests, and three others for acts of terror.<sup>82</sup> These numbers are low, but various other means existed to charge and punish in favor of the regime. A perfect example of taking advantage, through capital punishment, of a repressive situation created by the authorities themselves is the Pitesti prison

<sup>77</sup> Nicolae Doicaru became famous for the harsh treatment he applied to the prisoners in *Canal* corrective labor colony. Then he became the chief of important intelligence structures.

<sup>78</sup> ANCSAS, Fond *Documentar* [Documentary], file no. D016243, 68.

<sup>79</sup> ANAP, Fond *Fișe Matricole Penale* [Penal Registration Forms].

<sup>80</sup> “Decretul 202 pentru Modificarea Codului Penal al RPR” [Decree no. 202 for the Modification of the Penal Code of the PRR], *Official Bulletin*, 14 May 1953, 162.

<sup>81</sup> “Decretul 202 pentru Modificarea Codului Penal al RPR” [Decree no. 202 for the Modification of the Penal Code of the PRR], *Official Bulletin*, 14 May 1953, 162.

<sup>82</sup> ANAP, Fond *Fișe Matricole Penale* [Penal Registration Forms], author’s computing.

experiment started in 1949.<sup>83</sup> Briefly it can be described as the re-education process of mainly student members of ex-opposition parties through severe torture. But the core of the experiment was the forced transformation of the victims into torturers of their own colleagues, a brainwashing program that affected over 1000 inmates according to the lowest estimations. The experiment was stopped through a secret trial in 1952 in the context of the internal maneuvers for power between Gheorghe Gheorghiu-Dej and Teohari Georgescu, the Minister of Interior. While 22 death sentences were passed and 16 executions took place on 17 December 1954, the Securitate agents responsible for the experiment received light sentences and were shortly released.<sup>84</sup> Blatantly putting the blame on *enemies* - US and Iron Guard agents who infiltrated the Securitate - shows the trivialization of the reeducation concept itself and the attempt to avoid any negative consequences for the regime.

## II.4. The Abolitionist Attempt

A short period of attempted restoration of *legality* detrimental to the *Partiinost'* (the party spirit of Marxism-Leninism) defined the period after the death of Stalin in the USSR.<sup>85</sup> Of course, this had an echo in Romania as well, one of its results being the legal proposal on 5 July 1956, by A. Bunaciu, A. Alexa, Al. Voitinovici, I. Gh. Maurer and Gh. Diaconescu, the latter the Minister of Justice, which attempted to abolish capital punishment.<sup>86</sup> Surprisingly, the first was the former Minister of Justice when the death penalty law was enacted in 1949 and all of them were top communist jurists playing key roles in the prosecution of war criminals. They

<sup>83</sup> Alin Muresan, *Pitești. Cronica unei Sinucideri Asistate [Pitești. The Chronicle of an Assisted Suicide]* (Iasi: Polirom, 2011), 26.

<sup>84</sup> Romulus Rusan, *Cronologia si Geografia Represiunii Comuniste in Romania [The Chronology and Geography of the Communist Repression in Romania]* (București: Fundatia Academia Civica, 2007), 318.

<sup>85</sup> Otto Kirchheimer, *Political Justice...*, 289.

<sup>86</sup> ANCSAS, Fond Documentar [Documentary], file no. 13209, vol. 3, 136-139.

stressed that between 1949 and 1952 several laws provided capital punishment altogether for 48 crimes, which contradicts its *exceptional character*.<sup>87</sup> The problem was also underlined by Soviet jurists in 1945 when they discussed with the Romanian part the project of the new Penal Code. In the USSR the death penalty was abolished for most of the crimes during peacetime, according to the report. The five jurists proposed capital punishment to be replaced by lifetime imprisonment for most of the crimes, except 8 of them, wartime crimes but also aggravated murder. Very important, until the adoption of a new Penal Code, they proposed the abolition or at least the restriction of the death penalty to the most important crimes.<sup>88</sup>

What other reasons could drive them to make such a proposal? The answer can be found exactly in the fate of the abolitionist measure. The tone is cautious, and it had all the reasons to be so, since it was to be analyzed by top officials like Alexandru Draghici, Minister of Interior and the head of Securitate. He was one of the heads of the purges that dominated the party in the previous years and eliminated from the political arena top party leaders like Ana Pauker and Vasile Luca. The purges also determined the execution of the former Minister of Justice between 1944 and 1948, Lucretiu Patrascanu, after a long and humiliating imprisonment and a show trial in 1954. My interpretation is that the fear of future purges of a large part of the new elite determined them to ask at least temporarily, through the voice of the leading jurists, the abolitionist measure. This happened in what Kirchheimer called a short period of *restoration of legality* detrimental to the *revolutionary legality*.<sup>89</sup> Minister Draghici's answer to this report exactly rejected the temporary abolition of the death penalty and the exclusion of treason and espionage as capital crimes from the new Penal Code.<sup>90</sup> The problem was

<sup>87</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 13209, vol. 3, 136-139.

<sup>88</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 13209, vol. 3, 136-139.

<sup>89</sup> Otto Kirchheimer, *Political Justice...*, 288-192.

<sup>90</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 13209, vol. 3, 130-131.



postponed until the adoption of the new Penal Code. *Partiinost'* was about to be back in power very soon.

## **II.5. Decree no. 318/1958, the Harshening of the Penal Code and Afterwards**

A draft Penal Code was sent into the field and the magistrates and advocates were required to express their critiques only in 1957. Regarding article 44, concerning the death penalty, the vast majority expressed their concern, firstly because of the vague definition of the crimes punished by death, for instance in the case of *particularly serious embezzlement*, asking for a precise delimitation of the *serious* character, eventually setting a threshold.<sup>91</sup> Secondly, they addressed a critique of the punishment itself. From an ideological and judicial perspective, advocate Adolf Reneti from Sfântu-Gheorghe criticized the vague definition of the punishments in general: "The notion of punishment is confused with the scope of the punishment (reeducation). For the crimes where the punishment is death, reeducation makes no sense."<sup>92</sup> Advocate Ioan Dumitrescu from Giurgiu is even more explicit: "We are against this measure because it is in contradiction with the Marxist-Leninist principles, which consider the criminal educable and the punishment a means of reeducation and social reinsertion."<sup>93</sup> A. Hilsenrad does not understand why, "since this punishment exists...it has to be discretely inserted in the code as a "temporary measure". It should be at the top of the list of punishments in article 43."<sup>94</sup> "The multiplicity of the capital crimes demonstrates that the punishment is not

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<sup>91</sup> AMJ, unprocessed fond, file *Observations and Proposals for the Penal Code, Vol. II, 1957.*

<sup>92</sup> AMJ, unprocessed fond, file *Observations and Proposals for the Penal Code, Vol. II, 1957.*

<sup>93</sup> AMJ, unprocessed fond, file *Observations and Proposals for the Penal Code, Vol. II, 1957.*

<sup>94</sup> AMJ, unprocessed fond, file *Observations and Proposals for the Penal Code, Vol. II, 1957.*

exceptional”, advocate Dan Victor argued, “and if it is indeed temporary, it should not be a part of the Penal Code.”<sup>95</sup>

These critiques of the substantive part of the Penal Code were accompanied by procedural difficulties in interpreting the legal provisions in the act of justice. But these difficulties were unimportant as the law was a tool for the main aims of the regime to be achieved. Before the Penal Code was amended, a secret report of the Ministry of Interior heavily criticized the Ministry of Justice for the weak content of what probably was a draft of the code. Not all the crimes were included, the definitions were not wide enough, and “defending the security of our state was neglected... It ignores that in our country still exists a numerous social class fighting against popular power, overtly or underground, but in more and more various and subtle forms.”<sup>96</sup>

The authorities decided, in the meantime, the adoption of the above mentioned provisions as soon as possible. A new code was not adopted until 1969, but several laws amended it during the following years. The use of the death penalty was extended for aggravated murder by decree no. 469 on 20 September 1957 and on this year at least one person is executed for this crime.<sup>97</sup> It is very important to mention that this was the first time aggravated murder became a capital crime after 1944. The same decree provided the death penalty for *particularly serious embezzlement*. It explains the *particularly serious* character as follows: “the application of the maximum of the punishment provided by law for the simple form of the offence would not be enough.”<sup>98</sup>

<sup>95</sup> AMJ, unprocessed fond, file *Observations and Proposals for the Penal Code, Vol. II, 1957*.

<sup>96</sup> ANCSAS, Fond *Documentar [Documentary]*, file no. 10172/19, 389-390.

<sup>97</sup> ANAP, Fond *Fişe Matricole Penale [Penal Registration Forms]*.

<sup>98</sup> “Decretul nr. 469 pentru Modificarea Codului Penal” [Decree no. 469 for the Modification of the Penal Code], *Official Bulletin*, 30 September 1957, 229.

A year later, the Penal Code was heavily amended by decree no. 318 on 17 July. The decree summarizes the provisions of several other decrees in the period 1949-1958, but also includes many political crimes which newly became capital. The articles 184-192 describe treason in several forms, like passing state secrets regarding the capacity of defense, any act against an allied state, etc., while article 194 refers to cases of espionage. Another important set of capital crimes were those including crimes against internal security of the state. Article 207, one of the most used in relieving political opponents refers to acts of terror. - Decree no. 1 on 3 January 1959 makes the attempt to commit an act of terror a capital crime too -. Article 209 widely describes the cases of undermining national economy, already punished by death according to decree no. 202/1953. The application for embezzlement cases was restrained to the cases with a prejudice of over 100.000 lei, or below this level if the actions represented a severe social threat or were committed repeatedly. Most of these crimes were previously stipulated in the Penal Code, but not as capital crimes. Very important, the attempt to commit most of these crimes was also punished by death, and all the possessions of the executed had to be confiscated. Article 184 summarized the content of the decree through a very comprehensive paragraph: "The same punishment will be applied for any other crimes determined to undermine state unity."<sup>99</sup>

What could determine this attitude and such a tightening of the penal policy? The events in the USSR following the death of Stalin and condemnation of his policies, added to the uprising in Hungary<sup>100</sup> in 1956 and the withdrawal of the Soviet troops in 1958<sup>101</sup> were perceived as a threat by the unreformed Stalinist-type leader Gheorghe Gheorghiu-Dej. The

<sup>99</sup> "Decretul nr. 318 pentru Modificarea Codului Penal si a Codului de Procedura Penala" [Decree no. 318 for the Modification of the Penal Code and of the Criminal Procedure Code], *Official Bulletin*, 21 July 1958, 202.

<sup>100</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. 10172/19, 390.

<sup>101</sup> The events had a similar effect in the GDR. For this, see Evans, *Rituals of Retribution...*, 845, 867.

results were as expected. In 1958 and 1959 the use of the death penalty reached its height: 32 executions in 1958 and 55 in 1959. 28 people were put to death for embezzlement only, while 24 for acts of terror. The execution of 16 murderers, followed by other 8 executions for the same crime in 1960 reveals the incoherent policy of the regime regarding this crime, since all the executions for murder for the next 5 years (1961-1965) only reached 8 cases.<sup>102</sup>

The fight against fascism was a constant of the communist regime in Romania. After the trials following the war, legionaries were again on the spot. In 1958-1959 some of them were re-arrested and imaginary complots were tried. Ten people were arrested and sentenced to death by sentence no. 62 and no. 83 of the Military Tribunal of Bucharest in 1959. All of them were members of the former Iron Guard and most of them had been imprisoned prior to these trials and served sentences in Romanian prisons or labor camps. The accusations did not consist of war crimes or any other crimes related to the war period as might be expected. An official report was not kept, but it results from their clemency petitions<sup>103</sup> that they were accused of planning an armed insurrection against the social order. For this, they were alleged to have gathered armament and set up a terrorist organization, trying to reorganize the Legionary movement. According to Cristofor Dancu, a member of the clergy and one of the ten, the accusations were false, and they were actually arrested for the mechanism that they developed, of helping other legionnaires, consisting in raising funds for those in need. Some of them also had plans to flee the country fearing the persecutions; all these activities happened in the late 1940's.

Roman Uriciuc, the first arrested, talks in his petition about how the legal proceedings evolved and fake evidence was inserted into the files, how forced declarations were taken under

<sup>102</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, author's computing.

<sup>103</sup> NAR, *Fond Comitetul Central al PCR - Secția Administrativ-Politica [The Central Committee of the RCP - The Political-Administrative Section]*, file no. 17/1959, 1-42.

severe torture. It all started from some ammunition found in his house. He was tortured and asked to declare that they planned the reorganizing of the Legionary movement for the occupation of state institutions in case of upheaval. “I was told that if I don't declare this I will be shot, hanged on the fence, and a prison break will be staged.”<sup>104</sup> Apparently none of the 10 was executed. They were released in 1962-1964, when most of the political detainees were released.<sup>105</sup> But the attitude of the top authorities is synthesized by Gheorghiu-Dej's annotations on the clemency petition of Constantin Atanasiu: “Although guilty...(Dej: If you are guilty, then?); I have never been condemned before (Dej: So what? Maybe you wanted to be condemned a few times before being sentenced to death?).”<sup>106</sup>

Another member of the above mentioned group was the poet Radu Gyr, who mentions in his clemency petition: “I was a naïve poet all my life and I ask you from all my heart to commute my sentence. A poet asks clemency, a poor and naïve poet, old and ill, and not a terrorist or a political adventurer.”<sup>107</sup> But the naïve poet was one of the most prominent poets of the Iron Guard and, although accused of armed insurrection, the real reason for his death sentence was his poems.<sup>108</sup> He was imprisoned for his poetry two times before. On 2 June 1945 he was among the 13 accused in the *trial of journalists*. Two of them, Pamfil Seicaru and Grigore Manoilescu, the directors of “Curentul” and “Buna Vestire”, were sentenced to death in absentia for *contribution to the state's disaster*, showing that the intellectuals were also targeted by the regime.

<sup>104</sup> NAR, Fond Comitetul Central al PCR - Secția Administrativ-Politica [The Central Committee of the RCP - The Political-Administrative Section], file no. 17/1959, 37.

<sup>105</sup> NAR, Fond Consiliul de Stat. Decrete, [State Council. Decrees], file no. 411/1964.

<sup>106</sup> NAR, Fond Comitetul Central al PCR - Secția Administrativ-Politica [The Central Committee of the RCP - The Political-Administrative Section], file no. 17/1959, 1.

<sup>107</sup> NAR, Fond Comitetul Central al PCR - Secția Administrativ-Politica [The Central Committee of the RCP - The Political-Administrative Section], file no. 17/1959, 42.

<sup>108</sup> The most famous poem of Radu Gyr, *Ridica-te Gheorghe, Ridica-te Ioane!* [Raise up Gheorghe, Raise Up Ioane!], was considered an instigation to fascism.

The death sentence was the only possible punishment for the leaders of the partisan fighters, as happened with the ones from Fagaras mountains, for example. Being accused of acts of terror, brothers Toma and Petre Arnautoiu were executed on 18 July 1959, while Colonel Gheorghe Arsenescu was captured only in 1960 and executed in 1962.<sup>109</sup>

The wrath of the regime went beyond Romanian borders, as one particular case in 1959 illustrates. The actual events took place in 1955, when an armed group seized the Romanian embassy in Berne, Switzerland with the declared intention to attract attention to the abuses of the Romanian communist regime, and also to unmask its espionage activities. The hostage situation ended within a few days, with the imprisonment of the attackers in Switzerland. Considering it a staged event by the émigré members of the former Iron Guard, Western intelligence agents and Swiss government, the Romanian authorities took their revenge in 1957, when Oliviu Beldeanu, the released leader of the group, was abducted in West Berlin by Stasi and Securitate agents.<sup>110</sup> After being brought to Romania, Beldeanu was sentenced to death for treason on 31 October 1959, and executed on 2 February 1960.<sup>111</sup>

Yet another case, illustrated by a documentary film<sup>112</sup> in 2004, put the authorities in an even more unusual position in 1959. Five men and a woman, Alexandru and Paul Ioanid, Haralambie Obedeau, Sasa Musat, Igor and Monica Seviianu, all Jews and members of the nomenklatura, allegedly robbed a bank vehicle, stealing an enormous amount of money in a country where they could not spend it. The accusation was not a simple robbery, but plotting against state order.<sup>113</sup> In his documentary, the director A. Solomon advances several

<sup>109</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, form of Gheorghe Arsenescu.

<sup>110</sup> Stejarel Olaru, *Cei Cinci Care au Speriat Estul [The Five Who Frightened the East]* (Iasi: Polirom, 2003).

<sup>111</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, form of Gheorghe Beldeanu.

<sup>112</sup> *Marele Jaf Comunist [Great Communist Bank Robbery]*, directed by Alexandru Solomon, produced by BBC et al., France-Romania-Germany-UK, 2004, 70 min.

<sup>113</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, forms of Alexandru Ioanid, Paul Ioanid, Haralambie Obedeau, Sasa Musat, Igor Seviianu and Monica Seviianu.

hypotheses: that it was a defying act of a group of top party members unsatisfied by the turn the regime took, or that they were victims of the anti-Semitic purges that the Party operated in those years, etc. When corroborated by witnesses all these hypotheses appear potentially plausible. After their capture, the alleged robbers were asked to play in a propaganda movie about their own deeds, called *Reconstruction*.<sup>114</sup> The final part of the movie was not a reconstruction though, but the real trial in which the five men were sentenced to death and executed. *Reconstruction* was shown in private screenings at the time, but only for a specific audience formed by party members only; no doubt it was a delicate propaganda case.

Only in 1960, for the first time, through article 24 of the Decree no. 212 on 17 June, the death penalty is mentioned as a punishment - not on the general scale of punishments, but in a separate article -, “as an exceptional measure for the gravest crimes directed against social and state order in the People’s Republic of Romania, or against its rule of law.”<sup>115</sup> Genocide is included among capital crimes and other war crimes are more clearly defined, probably following the agreements reached in Geneva in 1955 in the cold-war context. The provisions regarding embezzlement were abolished by the same decree until 1969.

Regarding the way the executions took place, the execution regulation in 1958<sup>116</sup> introduced a few changes compared to the one already in use since 1942.<sup>117</sup> The clemency petition had to be formulated within 24 and not 48 hours after the appeal was rejected. In the 1942 regulation, seeing a priest and relatives, the possibility of writing a will and a glass of alcohol were allowed, but in 1958 these provisions are all denied. Only certain legal

<sup>114</sup> Alexandru Solomon, “The Experiences of a Filmmaker. Reconstructing Reality from Documents in Communist Archives” in *Past for the Eyes: East European Representations of Communism in Cinema and Museums after 1989*, ed. Oksana Sarkisova and Péter Apor, (Budapest: Central European University Press, 2008), 57-79.

<sup>115</sup> “Decret nr. 212 pentru Modificarea Codului Penal” [Decree no. 212 for the Modification of the Penal Code], *Official Bulletin*, 17 June 1960, 47.

<sup>116</sup> ANCSAS, Fond *Documentar* [Documentary], file no. 13209, vol. 3, 269-281.

<sup>117</sup> “Regulamentul Asupra Normelor de Urmă la Executarea Pedepsei cu Moartea” [Regulation for the Execution of Capital Sentences], *Official Bulletin*, 27 April 1942.

representatives and a medical examiner were allowed to be present for the supervision of the execution. In both cases the execution was carried out by a firing squad and the executed had to be blindfolded. The new regulation established that if a pregnant woman was sentenced to death, she will not be executed immediately after the birth of the child, but after 9 more months. However, no cases of executions of women are recorded, although examples of capital sentences exist: in May 1948 Cosma Aurelia's death sentence from March 1944 was commuted;<sup>118</sup> Spanu Sabina from Prigoria also received a commutation to 20 years forced labor for her capital sentence for murder in 1965.<sup>119</sup>

The peak of executions in 1958-1959 was decreasing in 1960, when 17 executions, 8 of them for murder and 5 for plotting against state order are recorded. In the years until the penological reform in 1969, the number of executions decreased, with only one execution for embezzlement in 1960, one for terror in the same year and 12 for murder recorded during the whole period. The penal registration forms provide information about 8 execution cases<sup>120</sup> between 1965 and 1968, and a statistical situation from the Ministry of Justice mentions 11 condemnation cases.<sup>121</sup> Although this seems to be a credible proportion, and the data confirm each other, they have to be considered relative.

In 1962-1964 the era of direct repression ended with the release of most political prisoners. According to the decrees<sup>122</sup> issued in this respect, more than 70 detainees whose death sentences were commuted in the meantime were also released. A new policy regarding the death penalty, more subtle, was about to begin after this, as we shall see.

<sup>118</sup> NAR, Fond *Ministerul Justiției – Gratieri*, [Ministry of Justice - Pardons], file no. 518/1948, 9.

<sup>119</sup> NAR, Fond *Consiliul de Stat. Decrete*, [State Council. Decrees], file no. 35/1967, 1.

<sup>120</sup> ANAP, Fond *Fișe Matricole Penale* [Penal Registration Forms], author's computing.

<sup>121</sup> AMJ, Fond *Secretariatul General* [General Secretariat], file no. 75, vol. 6, 2.

<sup>122</sup> Between 1962 and 1964 several decrees were issued in this sense, some of them containing thousands of names (e.g. 310/16 June 1964 and 411/24 July 1964).



In conclusion, the initial focus on war criminals/political enemies, in an atmosphere dominated by seizure of power, corresponds to the *Terror stage* delimited by Scobell in his study,<sup>123</sup> while a second stage, assuming *Routinization or codification of the repression* was enacted through several decrees amending the Penal Code and the establishment of a new court system. As Scobell<sup>124</sup> noticed, the leadership change usually determined a policy change regarding the death penalty, accompanied by a revision of the Penal Code, marking a *Readjustment*. This also happened in Romania, where a new Penal Code was adopted in 1969, increasing the accuracy of the legal provisions. However, in the Romanian case it does not coincide either with a period of economic liberalization, or with an increase of the economic capital crimes, which took place much earlier in late 1950's; Gheorghe Gheorghiu-Dej, the Stalinist ruler of Romania died in 1965, when Nicolae Ceausescu became the new Secretary General of the Romanian Communist Party.

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<sup>123</sup> Scobell, "The Death Penalty Under Socialism...", 189-234.

<sup>124</sup> Scobell, "The Death Penalty Under Socialism...", 189-234.

### **III. Capital Punishment and Politics in Communist Romania after the Penological Reform in 1969**

This chapter addresses the two decades from the penological reform in 1969, until the fall of the regime in 1989. Defined by a new attitude of the state towards legality, this period offers more accurate insights into the use of the death penalty. Following the description of the legal provisions concerning capital punishment, I will illustrate its political use through the examples of the campaign against economic criminality in 1984 and the continuous obsession the ruling couple had with traitors. Finally I will analyze the last year of the regime, including the execution of the Ceausescu couple and the abolition of capital punishment.

#### **III.1. 1969. A New Penal Code**

The harsh political repression of the 1950's in Romania ended with the release of most of the political prisoners between 1962 and 1964. From a Foucauldian perspective, what followed is very interesting. The brutal imprisonments, prison camps or tortures were replaced by more refined measures of coercion like home imprisonment, marginalization and atomization of the dissidents. Regarding capital punishment, important changes were initiated by the authorities, first in relation to its use, followed by a legislative change.

The generational change of leadership usually marked the adjustment of the official policy regarding the death penalty in communist countries, as Andrew Scobell revealed.<sup>125</sup> This applies to the Romanian case as well. As we can see, a massive change of the legal framework happens only in 1969, under the leadership of the younger Nicolae Ceausescu, when a new Penal Code came into force.<sup>126</sup> Its provisions were more attentively established and the attention to legality shows the subtleness of the new death penalty policy, while the use of capital punishment in the 1980's contradicts this legally established attitude.

The Romanian authorities paid a lot more attention to the international organizations and norms in this period. On 26 November 1968 the Economic and Social Council of the UN asked the member states, through resolution no. 2393, "to provide careful legal safeguards for those accused of a crime punishable by death".<sup>127</sup> Two years later, in 1971, another resolution, no. 1574 of 20 May stated that "the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment might be imposed with a view to the desirability of abolishing this punishment in all countries."<sup>128</sup> Romania answered the comprehensive quinquennial UN questionnaire regarding the death penalty only in 1980. However, these answers were provided by Militia, Securitate and the General Direction of Penitentiaries, and not by the Ministry of Justice, which shows once more the politicized character of the death penalty.<sup>129</sup>

The analysis of the legal provisions and the intentions behind the changes are largely explained after the adoption of the new Penal Code by its official commentary, *Theoretical*

<sup>125</sup> Scobell, "The Death Penalty Under Socialism...", 217.

<sup>126</sup> *Official Bulletin*, 21 June 1968.

<sup>127</sup> *Quinquennial Report of the Secretary-General of the United Nations on Capital Punishment (1975)*, accessed: 21 August 2011, <http://humanrightsdoctorate.blogspot.com/2010/07/secretary-generals-quinquennial-reports.html>

<sup>128</sup> *Quinquennial Report of the Secretary-General of the United Nations on Capital Punishment (1975)*, accessed: 21 August 2011, <http://humanrightsdoctorate.blogspot.com/2010/07/secretary-generals-quinquennial-reports.html>

<sup>129</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. 14867/14, 31-57.

*Explanations of the Romanian Penal Code.*<sup>130</sup> The volume firstly stresses that the death penalty is “a means of defense of the society and not a revenge instrument... This is in accordance with the principle of socialist humanism.”<sup>131</sup> The official ideological perspective pictures the future of the death penalty as a one way street: “Because of the political, economic and cultural development, we are getting closer to the point where the death penalty will be useless.”<sup>132</sup> The introduction of this *socialist humanism* principle has to be understood under the circumstances of the international emergence of the human rights principle. According to Roman Wieruszewski, this official interpretation in communist countries was defined by an original attitude towards human rights that practically denied all its content. The emphasis was moved from individual rights to collective duties that had to prevail in order to assure general happiness that the state was taking care of.<sup>133</sup> In this way rights become duties and any deviation has to be punished; Romania made no exception.

Particularly regarding the Romanian perspective, two authors connect the legal discussion to the *New Man* concept in an utopian manner: “The humanization process of the law is intimately connected to the humanization of the man, to the formation of the new man of our society...”<sup>134</sup>, while Ceausescu himself denounced Stalinism in rambling words:

It is necessary to start from the fact that the socialist law, the socialist legislation have to break any connection with the bourgeois law, with the old bourgeois conception... Otherwise we will still be stuck in the old Stalinist conception according to which while socialism becomes stronger, the class struggle becomes sharper and the repressive measures have to be increased...<sup>135</sup>

<sup>130</sup> Dongoroz et al., *Explicatii Teoretice...* .

<sup>131</sup> Dongoroz et al., *Explicatii Teoretice...*, 24.

<sup>132</sup> Dongoroz et al., *Explicatii Teoretice...*, 24.

<sup>133</sup> Roman Wieruszewski, “The Evolution of the Socialist Concept of Human Rights”, *SIM Newsletter*, 1 (1988): 28-29.

<sup>134</sup> Lörincz and Vida, “Umanismul Dreptului si Legislatiei...”, 151.

<sup>135</sup> Nicolae Ceausescu, *Drepturile Omului in Lumea...*, 123.

In the new Penal Code capital punishment is again mentioned separately from the general list of punishments, in art. 24, “because of its temporary character.”<sup>136</sup> Very importantly, the death penalty is provided only for the aggravated form of particular crimes and mentioned only as an alternative punishment alongside 15-20 years imprisonment, with two exceptions: genocide and inhumane treatments. This has to be read in the context of the adoption by the UN of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity on 26 November 1968. Romania signed and ratified it in 1969.<sup>137</sup> Stressing that capital punishment was kept for its deterrent role, the authors of the *Theoretical Explanations* mention, however, that it “lacks some of the attributes of a good punishment (because) it is irremissible, so irreparable in case of judicial errors, and lacks the quality of reeducating the criminal.”<sup>138</sup> *The experts* of the official commentary concluded the careful use and interpretation of the courts should not allow these abstract deficiencies to affect the application of the death penalty.<sup>139</sup>

There were over 30 capital crimes in the 1969 Penal Code, less than in 1952, when the abolitionist report of the five jurists enumerates 48. Seven of them were wartime crimes (leaving the navy, desertion from battlefield, capitulation, etc.). Besides treason (art. 155, 156), terrorist attacks (art. 160, 161), aggravated murder (art. 176), undermining national economy (art. 165-2) and theft from state property with severe consequences (art. 224-3), capital punishment is reintroduced for embezzlement (art. 223-3). The new Penal Code represented a

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<sup>136</sup> Dongoroz et al., *Explicatii Teoretice...*, 24.

<sup>137</sup> “Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity”, accessed 02 April 2012, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-6&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en).

<sup>138</sup> Dongoroz et al., *Explicatii Teoretice...*, 25.

<sup>139</sup> Dongoroz et al., *Explicatii Teoretice...*, 25.

definite advancement to more clearly defined legal provisions regarding capital punishment, but still retained substantial powers in the state apparatus.<sup>140</sup>

Again, the debates around the Penal Code stressed the issues surrounding the death penalty, as a joint report of the Ministry of Justice, Prosecutor General and President of the Supreme Tribunal shows: “It has been proposed that the death penalty should not be provided for any crime (art. 54), or should not be provided for crimes against public property (art. 54). The proposals have been rejected because in this phase this punishment is necessary for serious crimes because of its deterrent role.”<sup>141</sup> The official transcript of a plenary session of the Central Committee of the Romanian Communist Party fails to admit this, and presents a more balanced perspective: “Tov. Vasile Pantilinet: Of over 7000 formulated proposals, most of them refer to (...) non-application of the death penalty for crimes against public property, the application of capital punishment for some crimes that are not included in the project...”<sup>142</sup> The Ministry of Interior had an important role again, supporting the death penalty for crimes against state property, as it results from their written response.<sup>143</sup>

The Penal Code was amended several times before 1989, the most important changes being operated in 1973.<sup>144</sup> Other annotated and commented versions of the Penal Code were also published during this period. One of them,<sup>145</sup> whose volumes appeared throughout the 1970’s, recorded the decreasing number of capital crimes, although in 1972 hijacking an aircraft was added if it resulted in a person’s death or the consequences were severe. This probably happened following the international events in the same year, when members of the

<sup>140</sup> This also happened in other countries, like the GDR. See Evans, *Rituals of Retribution...*, 857.

<sup>141</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [*The Central Committee of the RCP – Chancellery*], file no. 95/1968, 78.

<sup>142</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [*The Central Committee of the RCP – Chancellery*], file no. 176/1968, 15.

<sup>143</sup> ANCSAS, Fond *Documentar* [*Documentary*], file no. D10172/13, 379.

<sup>144</sup> *Official Bulletin*, no. 55-56/23 April 1973.

<sup>145</sup> Vasiliu et al., *Codul Penal al Republicii Socialiste Romania...*

Black September terrorist organization hijacked a Lufthansa airliner. In Romania, such a case occurred in 1984, when Doru George Guguila tried to hijack an airplane to flee the country, in order to avoid other problems he had with the law. Helped by a minor, he failed. Although the official report only suggested that he “is a hardened parasitic element, antisocial and jobless”,<sup>146</sup> his mother’s clemency petition revealed through annexed medical documents that he was suffering from mental problems prior to that event.<sup>147</sup> Invariably, even if the psychiatric analysis revealed any mental issues, there is no recorded case throughout the communist period when the official report suggests pardoning for this reason. The report usually concludes that it did not alter the criminal’s discernment, and he should be made fully responsible for them. However, Doru George Guguila was pardoned,<sup>148</sup> although the reasoning behind pardons was usually not mentioned.

The new Penal Code provided a few exceptions from the application of the death penalty (art. 54). Minors were exempt if they were under 18 at the time when the crime was committed. The deterrent result was considered ineffective and the possibility of re-education still high.<sup>149</sup> Also a pregnant woman or a woman with a child no older than three could not be put to death. In these cases, the penalty would be irrevocably commuted, not only until the birth and/or the child reaching the age of 3 years, as in other countries. The motivation was that the psycho-physical state of a mother expecting to be executed would negatively affect the life of the child. In this case it would be commuted to a 25 year sentence.<sup>150</sup> A similar proposal for persons over 60 years old was rejected during the debates around the Penal Code, as a report of

<sup>146</sup> NAR, Fond *Consiliul de Stat. Decrete*, [State Council. Decrees], file no. 94/1985, 13.

<sup>147</sup> NAR, Fond *Consiliul de Stat. Decrete*, [State Council. Decrees], file no. 94/1985, 37.

<sup>148</sup> NAR, Fond *Consiliul de Stat. Decrete*, [State Council. Decrees], file no. 94/1985, 1.

<sup>149</sup> Dongoroz et al., *Explicatii Teoretice...*, 26.

<sup>150</sup> Dongoroz et al., *Explicatii Teoretice...*, 27.

the Ministry of Justice, Prosecutor General and President of the Supreme Tribunal reveals,<sup>151</sup> and another proposal increasing the minimum age to 21 was rejected in 1980.<sup>152</sup>

As a particular element of the new Penal Code, one should emphasize article 55, dealing with the commutation to a 25 year prison sentence – and not the prescription –, if the sentence had not been executed within two years after the delivery of the decision for the convict on trial. This was the case respectively for the convict whose execution was postponed for two years after he/she had been arrested or yielded himself/herself as prisoner, and seven years after the delivery of the decision if he/she had not been arrested. In justifying this stipulation, the reliance was not on humanitarianism, but the belief of the legislator, as revealed by the official commentary, that only the prompt application of the penalty could increase the intimidation, which weakens in time, shattering the execution.<sup>153</sup> A similar stipulation, although relying upon tradition, was applied in post-Mao China, establishing the possibility to adjourn the execution for two years, after which the sentence was in most cases commuted to lifetime detention.<sup>154</sup> However, this provision was not respected, as Ion Parvulet's case shows. He was sentenced to death on 7 March 1982 for a triple murder that he denied: "I am a member of the Unification Church<sup>155</sup> (...), but I never killed anyone and never threatened someone's life and no one has the right to sentence me to death if I am not guilty."<sup>156</sup> He was executed after more than 4 years on 31 October 1986<sup>157</sup> because the regime's interest in the campaign against economic criminality prevailed. His execution was delayed to improve statistics, as we shall see.

<sup>151</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [*The Central Committee of the RCP – Chancellery*], file no. 95/1968, 78.

<sup>152</sup> ANCSAS, Fond *Documentar* [*Documentary*], file no. D8850/16, 123.

<sup>153</sup> Vintila Dongoroz et al., *Explicatii Teoretice...*, 28-29.

<sup>154</sup> Scobell, "The Death Penalty in Post-Mao China", 503-520.

<sup>155</sup> Modern religious movement emerging from South-Korea.

<sup>156</sup> NAR, Fond *Consiliul de Stat. Decrete*, [*State Council. Decrees*], file no. 193/1986, 51.

<sup>157</sup> ANAP, Fond *Fişe Matricole Penale* [*Penal Registration Forms*], form of Ion Parvulet.



The new regulation for the execution of the death penalty, included in the general *Law for the execution of punishments* in 1969,<sup>158</sup> provided 5 working days to address the clemency petition after the final sentence was pronounced. The method was death by firing squad and the political cases were still to be tried by Military Tribunals in the 1969 Penal Code<sup>159</sup> although further practice showed that the line between civil and political cases was thin and interpretable.<sup>160</sup>

The first variation in the number of executions was an echo of the events in 1971, when Ceausescu announced through the later called *July Theses* a return to real-socialism;<sup>161</sup> this was the beginning of a neo-Stalinist period in the history of communist Romania. Twelve executions took place in 1971, all for aggravated murder, compared to only 7 executions in 1970 and 3 in 1969.<sup>162</sup> In 1974, Iulian Poenaru's book *Contributions to the Study of Capital Punishment* takes a comprehensive survey of the evolution of the death penalty around the world with no reference to the actual practice towards it in communist Romania. The final conclusions suggested that the future of the death penalty is abolitionist, closely following the official discourse of the regime.<sup>163</sup>

The politicization of the death penalty went so far during the late 1970's and 1980's that the relatives of the condemned in the 1950's were surveyed by the Securitate and even imprisoned in some cases.<sup>164</sup> Iuliana Predut was the daughter of Ion Constantinescu, executed in 1959 for acts of terror, as a member of the Arnautoiu resistance group. She was imprisoned

<sup>158</sup> *Official Bulletin*, no. 132/18 November 1969, 1084.

<sup>159</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [*The Central Committee of the RCP – Chancellery*], file no. 170/1968, 10-11.

<sup>160</sup> I refer here to most of the treason cases during the 1980's.

<sup>161</sup> A cultural revolution was projected, asking mainly for ideological conformity. See Dennis Deletant, *Romania under Communist Rule* (Bucuresti: The Civic Academy Foundation, 1998), 120.

<sup>162</sup> ANAP, Fond *Fişe Matricole Penale* [*Penal Registration Forms*], author's computing.

<sup>163</sup> Poenaru, *Contributii la Studiul Pedepsei Capitale*, 205-210.

<sup>164</sup> ANCSAS, Fond *Documentar* [*Documentary*], file no. D13349/136.

at an unknown date, released in 1964 and condemned again in 1975 to 12 years in prison for plotting against state interests.<sup>165</sup> Her mother, Justina Constantinescu, declared in 1978 to a Securitate informant: “I live in fear, every sound scares me and I have headaches”.<sup>166</sup> In 1980 Iuliana was free, but still under close surveillance.<sup>167</sup> Similarly, Gabriela Ioanid, the daughter of Paul Ioanid, one of the authors of the bank robbery in 1959, was still surveyed in 1983 because her mother and sister lived abroad in the U.S. and Israel, and she corresponded with them.<sup>168</sup>

### III.2. The Campaign against (Economic) Criminality

Besides the legal provisions, the criminal policy of the regime was marked by considerable amnesties in 1972, 1981, 1984, 1988, in an attempt to prove the regime’s humanitarianism. Actually the situation in prisons was difficult, but the propagandistic exploitation of the amnesties had to be maximized, as one can see from a meeting of the Permanent Bureau of the Politic Executive Committee on 19 August 1981:

Com. Nicolae Ceausescu: So the problem is, for now, their release from prisons, and I think we should do it through a collective amnesty on the occasion of 23 August. (...) We are talking about 5000-6000 people.

Com. Tudor Postelnicu: Regarding what com. Curticeau said, I want to report, com. General Secretary, that the reason is that we have one third more prisoners now than in the past.

Com. Gheorghe Radulescu: Alright, but this is an amnesty, not a release because of lack of “housing space”.

Com. Tudor Postelnicu: Besides this, many prisoners really regret their crimes and want to change...

Com. Nicolae Ceausescu: Alright darling, no propaganda now. We have to analyze this situation.

Com. Silviu Curticeanu: This means a substantive modification of the Penal Code.

Com. Elena Ceausescu: No darling, it is a simple amnesty.<sup>169</sup>

<sup>165</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. D13349/136, 47.

<sup>166</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. D13349/136, 44.

<sup>167</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. D13349/136, 42.

<sup>168</sup> ANCSAS, *Fond Documentar [Documentary]*, file no. D13349/136, 64.

<sup>169</sup> NAR, *Fond Comitetul Central al PCR – Cancelarie [The Central Committee of the RCP – Chancellery]*, file no. 64/1981, 3-5.

The amnesties expressed a severe inconsistency of the regime with its own penal policies, as has been criticized by E. Georgescu, Radio Free Europe commentator: “I want to remind my former colleagues that while they are asked not to hesitate to apply the death penalty to counterrevolutionary embezzlers, and in general to apply harsher penalties, Mr. Nicolae Ceausescu proves his humanity every year granting countless pardoning and amnesty decrees.”<sup>170</sup> A similar amnesty decree, no. 290 was issued on 9 August 1984. In January the same year, the aims of the regime regarding economic criminality were summarized by the president of the Bucharest Tribunal, Irina Negrescu, in an interview for *Informatia Bucurestiului*:

Regarding the crimes directed against state property, very important prejudices are produced in the unities where preventive financial control does not action as it should, and where financial legislation is misinterpreted. This indifference for public property – the only source of wealth for the whole people – takes very different forms, being the agency that facilitates the activity of some hardened elements that feast unscrupulously on public property. Each time justice intervened with all force.<sup>171</sup>

After 1969, important cases of ordinary citizens being accused of economic crimes were brought in front of the courts. Some of them were not made public, for example an economic espionage case in 1974 when the defendant’s death penalty was commuted, or in the case of two others condemned for disclosing state economic secrets in 1976.<sup>172</sup> However, the first highly publicized case, also used in a propaganda film,<sup>173</sup> ended in 1981. Gheorghe Stefanescu was sentenced to death and executed for embezzlement as the result of transactions with large

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<sup>170</sup> HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>171</sup> Val Voiculescu, “Cunoasterea Temeinica si Aplicarea Ferma a Legii [Throughout Knowledge and Firm Enforcement of the Law], *Informatia Bucurestiului*, January 5, 1984, 1-2 (record item) in HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>172</sup> *When state kills...*, (Amnesty International: London, 1989), 195, in HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>173</sup> *Secretul lui Bachus [Bachus’ Secret]*, directed by Geo Saizescu, produced by Casa de Filme Unu, Romania, 1984, 120 min.

quantities of wine in a state winery; the case involved several local party members in Bucharest. Although he was not initially sentenced to death, the Supreme Tribunal decided to issue a death sentence in 1981, after a 3 year trial. Legally, the case was never treated as a political one, the authorities avoiding this classification. Nevertheless, it was largely publicized like that, showing the “decadence of some elements”,<sup>174</sup> as the mentioned film tells us.

In 1983, murder and robbery cases resulting in death sentences started to be heavily publicized by *Romania Libera*, a central newspaper which presented at least five such cases.<sup>175</sup> In 1984, several people were sentenced to death for stealing meat from processing plants, which shows, alongside other examples, the severe scarcity of basic products.<sup>176</sup> The cases are part of the fierce campaign against economic criminality launched in 1984 by the authorities on the grounds of the economic crisis determined by Ceausescu’s decision to pay external debts.<sup>177</sup> This resulted in the number of executions almost doubling within a year, from 6 to 11, many of them were for murder and robbery in the same severe economic context<sup>178</sup>. No less than 14 other sentences for theft from public property were commuted by the President during the same year and 5 more in 1985.<sup>179</sup>

The press was used to disseminate the deterrent message again, and the cases involving theft from public property began to abound, as it was not allowed to mention them before.

*Romania Libera* reported on 21 December 1983: “A crime committed against national

<sup>174</sup> *Secretul lui Bachus [Bachus’ Secret]*, directed by Geo Saizescu, produced by Casa de Filme Unu, Romania, 1984, 120 min.

<sup>175</sup> HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>176</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete [The Central Committee of the RCP – State Council – Decrees]*, file no. 124/1984 and 23/1984; NAR, *Colectia Anneli Ute Gabanyi [Collection Anneli Ute Gabanyi]*, file no. 313, 70.

<sup>177</sup> Michael Shafir, *Romania: Politics, Economics and Society. Political Stagnation and Simulated Change*, (London: Frances Printer Publishers, 1985).

<sup>178</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete [The Central Committee of the RCP – State Council – Decrees]*, files no. 124/1984 and 237/1984.

<sup>179</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete [The Central Committee of the RCP – State Council – Decrees]*, files no. 237/1984, 124/1984, 94/1985.

economy is by itself a counterrevolutionary act that affects the interests of the whole people.”<sup>180</sup> Ironically, considering economic crimes a counterrevolutionary activity in 1958 became the object of severe critiques launched by the Ceausescu regime later, when condemning the Stalinist-type abuses. In 1986, small-scale private enterprise involving family members was de-criminalized in the USSR but in Romania things remained unchanged until the fall of the regime in 1989, although the campaign which started in 1984 lasted only one year. In 1986, 15 executions took place,<sup>181</sup> but all of them were postponed murder cases from 1984 and 1985 – including the above mentioned case of Ion Parvulet -. This shows that the authorities preferred to avoid reporting a massive increase in the number of executions; no wonder that Amnesty International failed to report them due to lack of information.<sup>182</sup>

The estimation I am able to make regarding the number of executions can be more accurate regarding the period 1969-1989 than the previous one. Overall, the penal registration forms reveal 99 executions, with only one classified as political, in 1970, although the accusation was murder.<sup>183</sup> Except for the embezzlement case of Gheorghe Stefanescu in 1981 and a case on undermining of national economy in 1973, all the cases were aggravated murder cases, which is one of the biggest differences compared to the period 1944-1969. Regarding the capital sentences that were not executed, the number is higher and most of them were for theft from state property.

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<sup>180</sup> “Masuri Severe Impotriva Celor Care Fura din Avutul Obstesc [Severe Measures Against Those who Steal from Public Property]”, *Romania Libera*, 21 December 1983 (record item) in HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>181</sup> NAR, *Fond Comitetul Central al PCR – Consiliul de Stat - Decrete [The Central Committee of the RCP – State Council – Decrees]*, file no. 101/1986 and 193/1986.

<sup>182</sup> *When state kills...*, (Amnesty International: London, 1989), 195, in HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>183</sup> ANAP, *Fond Fișe Matricole Penale [Penal Registration Forms]*, author’s computing.

### III.3. The Traitors

It is very important to place the events in the 1980's Romania in the context of the reforms in the USSR and the abolition of the death penalty in the GDR in 1987.<sup>184</sup> However, all the amnesties starkly contrast with the campaign against economic criminality and with the position of the ruling couple towards treason cases, throughout the period. In July 1978 Ion Mihai Pacepa, the chief of the foreign intelligence service, and personal advisor of Ceausescu, defected to the US and received a death sentence *in absentia*.<sup>185</sup>

This attitude towards *traitors*, especially of Nicolae and Elena Ceausescu, lasted until their final year, 1989. Mircea Raceanu was the last person sentenced to death (although not executed) in Romania, on 21 July 1989. Chief of the division for diplomatic relations with North America at the Ministry of Foreign Affairs, he was accused of treason by disclosing state secrets, and being an American secret agent. The sentence showed that he started his espionage activities in 1974, when he began working for the Romanian embassy in Washington.

Nicolae Ceausescu: It is about a shameless person, so to say (...). It is about this guy, Raceanu. He was caught in the act, and after that he admitted it... He has been arrested for a long time, but he is still under investigation. I decided that tomorrow the Procuracy and our Security organs will give a press release, so the facts will be publicly known.<sup>186</sup>

His clemency petition was desperate and justifiably so, as we will soon see:

Through my actions, I violated and disregarded the laws of the country, I dishonored the given trust and, more importantly, instead of finding the necessary force to prove the courage and dignity characteristic for the Romanian people, I let myself be driven to serving the interests of the American secret services against socialist Romania.

<sup>184</sup> Evans, *Rituals of Retribution...*, 860. According to Evans, in 1981 the West Germans wanted to raise the problem of the death penalty in the GDR, which would have put them in a bad light. The eventual rise of the question at the UN should result in the GDR representatives defending its use for the whole socialist bloc, with classic arguments like the imperialist threat. Later, in 1987, wanting to be better perceived in the international context, the GDR leader abolished the death penalty before an important visit to the West Germany.

<sup>185</sup> Ion Mihai Pacepa, *Red Horizons: Chronicles of a Communist Spy Chief*, (Washington, D.C.: Regenery Gateway, c1987).

<sup>186</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie [The Central Committee of the RCP – Chancellery]*, file no. 15/1989, 1-3.

I don't think a man can decay more than that (...) Now, at the hour of truth, truth being my only defense, I obey with all my trust and hope your decision. I bear inside the most severe punishment, the shame of having committed the crime.<sup>187</sup>

The Minister of Justice, Minister of Interior, General Prosecutor and the President of the Supreme Tribunal recommended the commutation of the sentence, and their report was approved by Ceausescu on 19 September 1989.<sup>188</sup>

But there is more to this story. Raceanu was the son of Gheorghe Raceanu, one of the signatories of *The Letter of the Six*, a document that severely criticized the Ceausescu regime, signed by 6 top members of the Party, released by the BBC and RFE on 11 March 1989.<sup>189</sup> The event is discussed during the same meeting of the Political Executive Committee when they rule on Mircea Raceanu's case, on 13 March 1989:

Com. Nicolae Ceausescu: A second problem refers to some old clients, so to say, political vagabonds, morally and politically déclassé, towards whom the Party already took some measures.

Com. Elena Ceausescu: It is treason.

Com. Nicolae Ceausescu: There is no point in talking to them. Their action is identical to treason (...). We have to see what the Constitution provides, what the law provides about this, because treason is treason.

Com. Elena Ceausescu: No matter who the traitor is; treason is treason.<sup>190</sup>

Gheorghe Apostol, another one of the six, was the main counter-candidate of Ceausescu after the death of Gheorghiu-Dej. He was placed under house arrest and his investigators hoped to convince him to publicly deny the content of the letter, according to his own statement in

<sup>187</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete* [*The Central Committee of the RCP – State Council – Decrees*], file no. 121/1989, 4-5.

<sup>188</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete* [*The Central Committee of the RCP – State Council – Decrees*], file no. 121/1989.

<sup>189</sup> Vladimir Tismaneanu, *Stalinism for All Seasons: A Political History of Romanian Communism* (Berkeley: University of California Press, 2003), 263.

<sup>190</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [*The Central Committee of the RCP – Chancellery*], file no. 15/1989, 4.

2006.<sup>191</sup> On 18 August 1989 the case was discussed in the Political Executive Committee of the RCP:

Com. Nicolae Ceausescu: Gheorghe Apostol has recently sent a letter to the Central Committee of the Party admitting his espionage activities and asking for clemency. (...) He joined the imperialist and Soviet espionage. The fact is admitted that he drafted, at their request, all sort of materials, like any traitor. This is the main point.

And now, after he promises he will not do it anymore, yesterday he said in front of the comrades that he realizes that he deserves capital punishment. (...) Of course, he declares that he regrets this and asks for clemency. (...) There is no point in an auto-critique in this case. Treasonable consequences - one's own country treason - cannot be solved through auto-critique.

Com. Elena Ceausescu: One who betrays has to be made responsible for his acts. (...)

Com. Nicolae Ceausescu: Of course, there is no hurry. But we have to take a clear position, draw conclusions and severe measures have to be taken.<sup>192</sup>

His interrogations continued without being sentenced until the Revolution in December 1989, when the regime fell apart. As we have seen, all treason cases are actually a betrayal of Ceausescu. Although capital punishment was not used in treason cases during the 1980's, it clearly results from the content of the discussions within Central Committee of the Party that those deciding did not have a problem applying it, considering it the right punishment.

An amnesty decree, no. 11 on 26 January 1988, was meant to mark Ceausescu's 70<sup>th</sup> anniversary. Its provisions were again discussed at a high level in the Executive Political Committee:

Com. Nicolae Ceausescu: I consider the amnesty of all crimes.

Com. Gheorghe Radulescu: Very good.

Com. Nicolae Ceausescu: And also the reduction of some punishments. (...) And it seems that we also have two more death sentences. Is that true?

Com. Dumitru Apostol: That is true.

Com. Nicolae Ceausescu: I propose to commute the death sentences to 20 years imprisonment.<sup>193</sup>

<sup>191</sup> Nicolae Balint, "Principiul Dominoului" [Domnino Principle], *Ziarul de Mures*, 13 March 2006.

<sup>192</sup> NAR, *Fond Comitetul Central al PCR – Cancelarie* [The Central Committee of the RCP – Chancellery], file no. 56/1989, 12-19.

<sup>193</sup> NAR, *Fond Comitetul Central al PCR – Cancelarie* [The Central Committee of the RCP – Chancellery], file no. 4/1988, 6.



Art. 3 of the decree established that “Capital sentences provided by courts are commuted to 20 years imprisonment.”<sup>194</sup> This measure was easy to mistake for a sign of general improvement. Presumably Roger Hood wrongfully refers to this episode when he notes in his book that Ceausescu had proposed in February 1988 to restrict capital punishment to serious cases involving state security and Romanian sovereignty.<sup>195</sup> On the contrary, Frankowski states that in January 1990, when the death penalty was abolished, 27 prisoners were awaiting their executions,<sup>196</sup> which is highly unlikely, since the only decree for commutations I identified for that year, no. 121 on 19 September 1989 referred to only one condemned, Mircea Raceanu.<sup>197</sup>

#### III.4. 1989 and the Abolition

The last to be sentenced and executed in Romania, ironically were the Ceausescu couple. Fleeing Bucharest on 22 December 1989, they were caught during the same day, in Targoviste, 80 kilometers away from the capital city of Bucharest. An Exceptional Military Tribunal (chaired by Victor Atanasie Stanculescu, the deputy Minister of Defense) was set up by the newly constituted Council of the Front of National Salvation. After a summary trial, they were accused among others of genocide (more than 60.000 victims), undermining state power, acts of diversion through destroying state property, the attempt to leave the country with a large amount of money, and undermining the national economy. Still, their advocate asked the judge not to apply the death penalty. Ignoring other procedural safeguards (the right to appeal for

<sup>194</sup> NAR, Fond *Comitetul Central al PCR – Cancelarie* [The Central Committee of the RCP – Chancellery], file no. 4/1988, 6.

<sup>195</sup> Roger Hood, *The Death Penalty: a Worldwide Perspective* (New York: Oxford University Press, 2002), 17.

<sup>196</sup> Frankowski, “Post-Communist Europe...”, 226.

<sup>197</sup> NAR, Fond *Comitetul Central al PCR – Consiliul de Stat - Decrete* [The Central Committee of the RCP – State Council – Decrees], file no. 121/1989, 4-5.

instance), they were immediately executed in Targoviste on 25 December 1989. Their execution generated a lot of scenarios, one of them being that it was an internal affair, a revenge of the nomenklatura.<sup>198</sup> The new leaders wanted in this manner to avoid a real political process of the regime as a whole, including its institutions, and to put all the blame on Ceausescu's shoulders.

A few days later, the death penalty was abolished by the National Salvation Front through decree-law no. 6 on 7 January 1990, with no previous debate. This rapid decision may also be interpreted as the fear of former communists to be punished in such troubled times,<sup>199</sup> while many of them were occupying most of the leading positions in the new power structures. In this context, general support for capital punishment also determined the discussions regarding the restoration of capital punishment through a referendum,<sup>200</sup> in January 1990, but this was never held. Frankowski rightly noted that the abolition of the death penalty was also the result of political influence,<sup>201</sup> as well as most of its other aspects. Still, he identifies two more reasons for the abolition after 1989 that better apply to the rest of the East European countries, which took this decision one after another, most of them during the 1990's: a late reaction to the excesses of Stalinism, and the goal of joining the Western community.<sup>202</sup> His other observation, that in the new transition conditions, the rising criminality - in new forms,

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<sup>198</sup> Vladimir Tismaneanu, "Sange, Minciuni si Whiskey, sau cum a Murit Ceausescu" [Blood, Lies and Whiskey, or how Ceausescu Died], accessed 22 May 2012, [www.contributors.ro/politica-doctrine/sange-minciuni-si-whiskey-sau-cum-a-murit-ceausescu/](http://www.contributors.ro/politica-doctrine/sange-minciuni-si-whiskey-sau-cum-a-murit-ceausescu/).

<sup>199</sup> David A. Kideckel, "The Undead: Nicolae Ceausescu and Paternalist Politics in Romanian Society and Culture", in *Death of the Father: an Anthropology of the End in Political Authority*, ed. John Borneman, (New York: Berghahn Books, 2004), 123-148.

<sup>200</sup> HU-OSA-300-60-1, Records of RFE/RL Research Institute [fonds], Romanian Unit [subfonds], Subject Files [series], container no. 14.

<sup>201</sup> Frankowski, "Post Communist Europe...", 231.

<sup>202</sup> Frankowski, "Post Communist Europe...", 226.

previously unknown - determined a high support level for capital punishment,<sup>203</sup> could also be observed in the Romanian case.

Following Scobell's scheme,<sup>204</sup> the last two stages in the development of criminal policy and the death penalty in communist countries included a reform of the penological system through decriminalization and the shortening of the prison terms, and ultimately the abolition of capital punishment, as in the GDR, followed by a public demand for harsher measures due to increasing criminality. But, as Scobell also mentioned, this did not apply to the countries where the generational change did not take place. Although direct executions of the dissidents did not take place, in 1980's Romania the propaganda machine heavily used capital punishment. Unfortunately stagnation in an antiquated ideology and a backward leader made Romania an exception, where capital punishment was a political tool until the last days of the regime.

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<sup>203</sup> Frankowski, "Post Communist Europe...", 226.

<sup>204</sup> Scobell, "The Death Penalty Under Socialism...", 189-234.

## Conclusions

This thesis offered data, examples and an interpretation of what has been a taboo topic for Romanian historiography: the relations between capital punishment and politics in communist Romania. Because this area was previously unexplored, it required an extensive analysis of various primary sources which allowed a survey of the legal framework, an approximate account of the number of sentenced and executed people as well as the reconstruction of particular cases. All have been placed within an interpretative scheme in the larger context of the legal and political history of Romanian communism.

In terms of the death penalty, the first half of the communist period was very dynamic. Its start was dominated by the issue of war criminals, which often took a retributive form, a disguised way of punishing the fascists, former political rivals of the communists. Poor data does not allow us to have a full account on the dimensions of this phenomenon, while a comparison with other East-European communist states confirms that the data is incomplete. In 1949, the legal provisions concerning capital punishment were extended to several economic and political crimes, intended to frighten a large part of the population. The propagandistic use was centered on the publicity of the legal provisions and not on particular cases, except for the bank robbery case which was presented to a limited audience. Counting first on the specific deterrent effect of the executions, the regime used the death penalty mainly to eliminate fascists, saboteurs, traitors or members of the resistance groups, etc. Although it could also directly eliminate them, the authorities decided to follow the legal procedures. This was meant

to provide the appearance of legality that aimed to improve regime's image and also had a general deterrent feature. Although leading jurists debated and attempted to abolish capital punishment in 1956, legal provisions and actual use tightened in 1958 when the Stalinist ruler Gheorghe Gheorghiu-Dej felt less secure about his position. The reasons were the de-Stalinization process that followed the death of Stalin in the USSR, the events in Hungary in 1956 and the withdrawal of Soviet troops from Romania in 1958. After the high execution rates registered in 1958-1959, the figures came back to normal until the adoption of the new Penal Code in 1969, demonstrating that the application of the legal provisions was again a political matter.

The period after the penological reform in 1969 was particularly linked to the personality of Nicolae Ceausescu. The legal provisions, as they were explained to the wider public, were developed in the spirit of a claimed humanitarianism of the regime, and thus blamed the violent repression specific to the Stalinist period. The dream of an *ideological abolition* is recycled through a discourse on the natural disappearance of the death penalty accompanying the construction of the *New Man* and the decrease of criminality in general. This ideological discussion had no connection with the tight legal framework and even less with its interpretation and the politicized use of capital punishment.

Compared to the Stalinist period, the use of the death penalty for direct political purposes such as eliminating opponents disappears, especially if we consider that no person was executed for treason. However, the politicization of capital punishment can be observed if we look at its inconstant use, dependent on various deterrent campaigns disseminated by the propaganda machine. For example, the first increase in the number of executions, in 1971, followed the adoption of the *July Theses*, a statement of return to real-socialism. The regime

took a neo-Stalinist turn in the 1980's, when after first degree murder, economic crimes and treason were the main capital crimes. Economic criminality draw attention as a result of the deep economic crisis Romania was facing and resulted in at least 19 capital sentences for economic crimes in 1984 and 1985, largely publicized by propaganda through central newspapers together with murder and robbery execution cases. Unlike these, treason cases were secretly discussed in high level meetings by the increasingly intransigent ruling couple who allowed no dissidence.

In this period the GDR abolished the death penalty and most of the East European countries decreased the use of capital punishment. In this respect, Romania was an exception, not just for the excessive use of capital punishment, but because its application was uneven and dictated by the political interests, thus making the Romanian case interesting. In the face of the deepening gap between the official discourse and the rising criminality, Ceausescu reacted by granting large amnesties which aimed to improve his own image. Ultimately, Ceausescu himself was sentenced to death and executed during the upheaval of December 1989.

Between 1944 and 1989 it was not the Justice who took the important decisions regarding capital punishment. Ministry of Interior, the Securitate and the Central Committee of the Romanian Communist Party were the main decision makers when the legal provisions were discussed as well as in the application of the death penalty. Although there was an interpretative difference between the official discourse of the two periods, as well as a substantial decrease in its use as a political tool, nonetheless the death penalty in Romania was dominated by political factors throughout the communist period.

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