

Research Article

TRANSITIONAL JUSTICE MECHANISMS AND SOCIETAL RECONCILIATION FOR THE RULE OF LAW AND DEMOCRACY CONSOLIDATION IN POST-COMMUNIST ROMANIA. JURISPRUDENTIAL PERSPECTIVES ON REPARATORY RIGHTS, LUSTRATION AND REGIME OF PROPERTY

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ABSTRACT

Background: The collapse of the communist regime in Romania in December 1989 triggered a stage of profound and complex legislative changes aimed at repairing abuses, discrimination and violations of rights, with challenges for the justice reform process and for institutional and social governance. The reform of the state and the process of European integration have engaged in social debates and legal initiatives aimed at guaranteeing citizens' rights and freedoms and promoting social reconciliation. In this context, the condemnation of communist crimes, the recognition of abuses, the restitution of

property, and the lustration attempts represented two central levels of political and judicial reform in post-communist Romania. This study aims to investigate how these legislative initiatives, as well as other associated regulatory approaches, have been legislated in accordance with the standards and commitments for European and Euro-Atlantic integration.

Methods: The study proposes a qualitative approach, which addresses both the documentary analysis of legislative proposals and initiatives, grouping three main themes: (1) transitional justice, recognition and granting of rights to politically persecuted persons and honouring the memory of the heroes-martyrs in the December 1989 Revolution; (2) legislative initiatives on the restitution of properties, the legal situation of residential buildings previously transferred to state property, the regulation of the status of judges and prosecutors; and (3) legislative preparations on integration into European and Euro-Atlantic structures and initiatives for the establishment of institutional structures on the investigation of communist crimes and the analysis of the communist dictatorship. For the research of these topics, the research will use methods specific to the legal study such as: (a) normative analysis and examination of the texts of laws, decree-laws and ordinances of the executive adopted and issued during the communist period; (b) the analysis of the jurisprudence by studying the decisions of the European Court of Human Rights (ECHR), the analysis of the exceptions of unconstitutionality raised by the Constitutional Court of Romania in the matter of property restitution and the application of the law in the field and (c) the historical-legal analysis necessary for correlating the legislative reforms and initiatives with the political and historical context by conforming to three chronological frameworks of analysis: the fall of the regime, political transition and integration into European and Euro-Atlantic structures.

Results and conclusions: The research indicates an uneven evolution of the normative framework, marked by fragmentation challenges in the legislative reform process regarding the recognition of victims, the restitution of property, and social reconciliation. Despite these legal, political and social contexts, the research highlights both the legislative progress and the societal benefits for transitional justice in Romania, but also the opportunity of such an analysis carried out thirty-five years after the December 1989 Revolution for the development of a legal culture focused on respect for human rights and the consolidation of the rule of law in societies in transition.

1 INTRODUCTION

Over 35 years since the Romanian Revolution of December 1989, studying transitional justice in Romania requires two parallel processes to configure the analysis of the field. An initial approach configures the role of the legislation newly adopted in post-communist Romania, intended to build and engage trust in state institutions after the fall

of communism and to define the status and role of the rule of law.¹ The second approach addresses multiple facets that configure both the search for truth, criminal justice, restorative justice, and institutional reform, as well as the judicial and non-judicial mechanisms of constitutional and legal reform in the democratisation process,² intended to confirm Romania's commitment to integration into European and Euro-Atlantic structures in the period 2004-2007.

The study is hence designed as a unifying research of Romania's post-communist transition in terms of historical context, political will and legal developments. The fall of communism in Romania in 1989 placed the country on a winding path of transition, with complex perspectives on reparatory rights, lustration endeavours and the regime of property redress compared to other former communist countries in Central and Eastern Europe.³ Thus, this research is relevant and appropriate for addressing transitional justice in Romania in its hypostasis as an essential mechanism for addressing past issues.

The relevance of transitional justice mechanisms globally stems from their efforts to address abuses committed by former regimes against human rights, property rights, and democracy. The study is rooted in a broad understanding of transitional justice mechanisms, providing a strong conceptual foundation aimed at employing a focused legal analysis encompassing legislation on victims' reparations, lustration attempts, and property restitution efforts, among others, thus following both a legal and societal approach of reconciliation for rule of law and democracy consolidation.

1 For a broad overview, see Ilir Kalemaj, 'Transitional Justice and Democratic Consolidation in Post-communist Eastern Europe: Romania and Albania' (2021) 12(1) *Eastern Journal of European Studies* 81. doi:10.47743/ejes-2021-0104; Camilla Orjuela, 'Passing on the Torch of Memory: Transitional Justice and the Transfer of Diaspora Identity Across Generations' (2020) 14(2) *International Journal of Transitional Justice* 360. doi:10.1093/ijtj/ijaa005; Liviu Damsa, 'Transitional Justice in Post-communist Romania: The Politics of Memory' (2015) 67(7) *Europe-Asia Studies* 1155. doi:10.1080/09668136.2015.1066621. A comprehensive analysis with theoretical, analytical and practical implications can be found in Iryna Izarova, Yuliia Hartman and Silviu Nate, 'Mechanisms for the Compensation of War Damages: Toward a Fair Solution for Ukraine' (2024) 10(1) *International Comparative Jurisprudence* 29. doi:10.13165/ijc.2024.06.003.

2 For a detailed analysis of the memorization policy see also Lavinia Stan, *Transitional Justice in Post-communist Romania: The Politics of Memory* (CUP 2013); Lavinia Stan, 'Civil Society and Post-communist Transitional Justice in Romania' in Olivera Simić and Zala Volčič (eds), *Transitional justice and civil society in the Balkans* (Springer 2012) 17. doi:10.1007/978-1-4614-5422-9_2; Cynthia M Horne, 'What is Too Long and When is Too Late for Transitional Justice? Observations from the Case of Romania' (2020) 2(1) *Journal of Romanian Studies* 109. doi:10.3828/jrns.2020.2.1.06; Raluca Grosescu, 'Judging Communist Crimes in Romania: Transnational and Global Influences' (2017) 11(3) *International Journal of Transitional Justice* 505. doi:10.1093/ijtj/ijx016.

3 For a detailed assessment of transitional justice effectiveness and fairness in Romania see Lavinia Stan, 'Neither Forgive nor Punish? Evaluating Transitional Justice in Romania' in Vesselin Popovski and Mónica Serrano (eds), *After Oppression: Transitional Justice in Latin America and Eastern Europe* (United Nations University Press 2012) 363; Lavinia Stan, 'Transitional Justice Research: An Overview of Latest Trends' (2021) 21(2) *Studia Politica: Romanian Political Science Review* 369.

The study addresses the need for a legal analysis circumscribing legislation (among others, the adoption of Law No. 10/2001 for restitution and also lustration attempts), institutional changes, jurisprudential outcomes identifying the mechanisms consolidating the rule of law, free access to justice and guaranteeing democratic rights and freedoms, but also revealing their gaps in implementation. Moreover, the research on the ECHR and the Constitutional Court of Romania jurisprudence aims to uncover the need for legal certainty, reparatory measures, and property rights, as well as the recognition of rights for social justice, reconciliation, and the consolidation of democratic legitimacy in line with the prerequisites for the European and Euro-Atlantic integration.

Subsequently, the objectives and scope of this study are limited to analysing the framework of transitional justice in Romania from legal, jurisprudential, historical, political, and social perspectives, and to sharpening the following directions: focus on addressing reparatory rights, lustration struggles, and property restitution, with the aim of societal reconciliation and democratic consolidation. The research scope involves reviewing the consolidation of transitional justice mechanisms aimed at societal reconciliation, the enhancement of the rule of law, and the strengthening of democratic governance in Romania after the fall of communism. The research is oriented towards the examination of jurisprudential buildout and legal readings in the following directions: 1) compensation rights to victims of abuses of the former communist regime; 2) lustration initiatives and legal consequences; and 3) property restitution measures and reform of the property regime, as agents of judicial remedy.

Q1. How have the mechanisms of transitional justice been employed in Romania after the fall of communism in 1989?

Q2. To what degree have these policies carried through their goals of restorative justice, rule of law enactment and democratisation?

Q3. What strains manifest between individual reparatory rights and the broader societal reconciliation and consolidation of democracy?

Q4. To what extent were national legal provisions correlated to European normative standards in the matter of transitional justice?

Q5. To what extent have the policy reforms systematically contributed to the overall outcomes of transitional justice in Romania?

Hence, an expected outcome of the research, as stated by the hypothesis, is that, in Romania, the selection and evolution of transitional justice mechanisms depended on both the political context and the will of political actors and civil society.

The following section presents the guiding methodological principles and tools and outlines the key research questions for interpreting transitional justice mechanisms and societal reconciliation.

2 METHODOLOGY

The present study is based on a set of legal methods specific to transitional justice analysis. The research will analyse regulations adopted in post-communist Romania, including laws, decree-laws, and ordinances issued by the executive during the transition period. The advantage of this method is evident in the focus on how the principles of the rule of law have been promoted and implemented. By applying this type of analysis, the research has an interpretative and systematic character. It identifies both the legal terminology and the formulation of descriptive findings regarding the operational legal concepts of the transition. At the same time, the rigorous examination of the normative framework generates a complex analysis of the structural and functional directions of the judicial reform as well as the conformation of the systemic limits of each initiated legislative project.

Secondly, the study associates and integrates the analysis of the jurisprudence of national and European courts regarding the restitution of property, the violation of fundamental human rights and freedoms and the rights of revolutionaries. By applying this component of jurisprudential analysis, a doctrinal examination of the legal principles of convergence between transitional justice in post-communist Romania and the normative standards of the European framework for the protection and guarantee of human rights is undertaken. Secondly, by correlating national legal provisions with European jurisprudential reasoning, the research evaluates and contextualises the legal adequacy of the legislative projects adopted by transitional justice in post-communist Romania. At the same time, a narrative-descriptive vision is outlined, necessary for understanding the fundamental directions of reform that have influenced the evolution of judicial practice, the reparative mechanisms and instruments, the accountability of the authorities, and institutional governance.

The third methodological dimension calls for historical-legal analysis. It correlates the stages of legislative reforms with the consolidation of the rule of law and the process of European and Euro-Atlantic integration. In this context, the research will also use the teleological method to analyse the role of legislative initiatives in relation to the declared goals, namely social reconciliation, recognition of abuses, reparation of injustices, legal reform, and consolidation of the rule of law and democracy. This methodological approach allows the detailed examination of the conformity between the normative purpose of the legislative project and the legal and societal effects produced at the regulatory and implementation level. At the same time, the analysis assesses how Romanian society calibrated and shaped institutional governance during the reform process, examining in depth the concordance and conformity between the teleology of the argumentation and its consequences in implementation and application.

The research methodological perspective adopts a triple analytical and operational framework.

(1) The first section delimits and formats the challenges of the legal transition of Romanian post-communism and focuses on the legal approaches of the institutional system in the extraordinary circumstances of the 1990s, as well as the mechanisms of access to justice and the consolidation of human rights. The first section of "reconciliation" focuses on the period 1990-2003 and orders the restoration of the right of the knowledge society and the recognition of the truth through social dialogue, legislative initiatives and legal reform. It is part of the initiation and search for reconciliation in Romanian society that calls for a holistic approach to institutional responses in the justice sector and to reform.⁴

(2) The second section that we generically call "accountability" targets the lustration initiatives and the stages of the judicial process regarding the temporary limitation of access to some public functions and dignities for persons members of the power structures and the repressive apparatus of communism. Lustration legislation identifies and debates the status of mechanisms for claiming access to certain public functions and dignities and launches an in-depth analysis of the accountability process carried out from June 2005 to March 2013.

(3) The third section of "claiming" and assuming addresses the impact of legal reforms on democratization and Euro-Atlantic (2004) and European (2007) integration, associating initiatives and symbolic gestures of decision-makers, denouncing the crimes of the former communist regime, as well as guarantees of constitutional rights aimed at restoring the trust of citizens and society in the rule of law. This part analyses the legislative and restorative initiatives that marked the period 2004-2009.

To analyse the course of transitional justice in Romania, this section highlights the main normative acts that regulate the entire spectrum of processes and legal instruments associated with the period after the December 1989 Revolution, intended to serve justice, seek and reconstruct the truth, repair, and effect reconciliation.

The analysis employed rigorous selection criteria based on legislative judicial practice related to the post-1989 regime of reparations, property restitution, and public office eligibility: 1) legislation and judicial decisions on reparatory rights for victims of communist repression; 2) lustration initiatives; 3) legislation and judicial decisions on restitution and property regime. Hence, the content selection stage proceeded to analyse laws, decrees, legislative initiatives, constitutional and judicial practice (Constitutional Court of Romania, ECHR decisions involving Romania). Moreover, the analysis of the selected content follows

4 For a general analysis of the justice sector and reform see the extensive approaches and legal references on the question of how to deal of the communist legacy and major scepticism of the transitional governments, see Andrei Shleifer, 'Government in Transition' (1997) 41(3-5) European Economic Review 385. doi:10.1016/S0014-2921(97)00011-1; Erin Daly, 'Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition' (2008) 2(1) The International Journal of Transitional Justice 23. doi:10.1093/ijtj/ijn004.

a chronological and topical logic; the legislative documents and outcomes of judicial practice under scrutiny fall under different sections addressing post-communist reconciliation, restitution and accountability, including lustration initiatives.

These state search mechanisms on normative bases include the main legal provisions adopted for the reconstruction of the truth, the execution of criminal justice, compensatory measures for persons politically persecuted by the communist dictatorship, the establishment of national commissions and the search for truth, the granting of compensation for war invalids and veterans, the regulation of the status of a martyr city of the December 1989 Revolution, the legal status of the houses confiscated by the communist regime, but also the process of retrocession of buildings that belonged to ethnic minorities and religious cults in Romania. Thus, this part investigates how various normative acts were adopted, amended, and republished during the post-communist transition, and examines the role of transitional justice initiatives in memorialising the past, protecting victims and descendants, and permanently mobilising the torch of memory to prevent new human rights violations.

3 POST-COMMUNIST TRANSITIONAL CHALLENGES AND THE 3RS OF TRANSITIONAL JUSTICE: RESTORATIVE, RECONSTRUCTIVE AND RECONCILABLE

The initiative to analyse transitional justice in Romania aims to identify and investigate the relevant legal acts adopted by the Romanian authorities after the Romanian Revolution of December 1989. In this sense, the first measures transitional justice through the exploratory approach of the legal field of transitional justice and through a chronological positioning of normative acts intended to detail the process of adoption and implementation, but also to explore the legal effects of their implementation at the level of political entities, states, and societies.⁵

This approach highlights the degree of systematisation and adaptation of the normative acts adopted in the field of transitional justice in Romania to the post-communist legal reality, as a key element of the law-creation process after the fall of communism in December 1989.⁶ In this perspective, the first part proposes a legislative analysis of the main ten legislative initiatives for regulation in the field of transitional justice, namely

5 For a detailed analysis on the typology of the normative acts in transitional justice see Eric A Posner and Adrian Vermeule, 'Transitional Justice as Ordinary Justice' (2004) 117(3) Harvard Law Review 761. doi:10.2307/4093461.

6 More particularly, the term "law creation" in transitional justice included the sum of process and legal instruments shaping "postconflict and postauthoritarian justice", see Leslie Vinjamuri and Jack Snyder, 'Law and Politics in Transitional Justice' (2015) 18(1) Annual Review of Political Science 303. doi:10.1146/annurev-polisci-122013-110512.

human rights and freedoms, the rights of persons politically persecuted during the communist dictatorship, the honouring of the heroes-martyrs of the Romanian Revolution of December 1989 and the rights of their descendants, the legal status of confiscated properties, denial and prohibition of symbols.

Thus, the normative acts adopted to regulate social relations set out the main benchmarks of legal reform based on legal, social, and political pluralism, compliance with the democratic norms of a free society, and a fair mechanism for reporting and guaranteeing rights and freedoms.

3.1. Amnesty for Some Crimes and Pardoning Others (Decree-Law No. 3/1990)

The Decree-Law (D.-L.) No. 3/1990, adopted by the Council of the National Salvation Front on 4 January 1990,⁷ amnesties the political offences ordered and provided for by the Penal Code, as well as the political offences regulated by other special laws and which were committed after 30 December 1947.⁸ D.-L. No. 3/1990 lists and exemplifies in Article 1 the amnestied political offences as follows: expressing forms of protest against the communist dictatorship regime, with express reference to terror and abuse of power by those who exercised political power in the state.⁹

A defining note establishes the positioning in the legal reality, shaping social life and explaining and guaranteeing the fundamental rights and freedoms of the citizen. From the perspective of transitional justice, the express regulation of the acquisition of "civil and political, economic, social and cultural rights"¹⁰ serves to order the system of

7 Decree-Law of CFSN no 3 of 4 January 1990 'On the Amnesty of Certain Crimes and the Pardon of Certain Punishments' (Decree-Law no 3/1990) [1990] Monitorul Oficial al României 2.

8 In the same context, in the first month of 1990, other Decree-Laws were issued by the Council of the National Salvation Front (CFSN) that regulate aspects of social life, the relations between the different institutional actors, but also highlight the new benchmarks of good practice of transitional justice, see: Decree-Law of CFSN no 1 of 1 January 1990 'On Some Measures Following the Cessation of Activity or Reorganization of Some Central and Local State Bodies' [1990] Monitorul Oficial al României 1; Decree-Law of CFSN no 2 of 3 January 1990 'On the Organization of Public Assemblies' [1990] Monitorul Oficial al României 1; Decree-Law of CFSN no 6 of 7 January 1990 'On the Abolition of the Death Penalty, for the Modification and Abrogation of Certain Provisions of the Criminal Code and Other Normative Acts' [1990] Monitorul Oficial al României 4; Decree-Law of CFSN no 7 of 7 January 1990 'On the Establishment of Extraordinary Military Tribunals for the Trial and Punishment of Terrorist Acts' [1990] Monitorul Oficial al României 4; Decree-Law of CFSN no 12 of 10 January 1990 'On the Abrogation and Modification of Certain Provisions of the Criminal Code and the Code of Criminal Procedure' [1990] Monitorul Oficial al României 7; Decree-Law of CFSN no 19 of 12 January 1990 'On the Establishment of the National Commission for the Resolution of Citizens' Complaints and Grievances' [1990] Monitorul Oficial al României 8; Decree-Law of CFSN no 21 of 12 January 1990 'On Amending Article 50 of Decree no 207/1976 Regarding the Material Liability of the Military' [1990] Monitorul Oficial al României 8.

9 Decree-Law no 3/1990 (n 7) art 1 a).

10 *ibid*

regulating rights and substantiate the role of the legal function in the incipient period of Romanian post-December democracy. Punishments of up to 3 years, such as measures of sending to work school and re-education ordered in the case of minors, are completely pardoned, with the exception of repeat offenders under the conditions expressly mentioned in Article 4.¹¹ Another provision of a reparative nature regulates the contravention sanctions, which, according to the new regulation, are no longer applied, and if applied, are no longer executed.

After the evaluation of the provisions on amnesty for some crimes and pardoning others (Decree-Law No. 3/1990), the following stages examine the subsequent legislative drafts on the analysis of the draft regulations on the protection and rights of persecuted persons and the configuration of the needs of restorative and symbolic justice of a reparatory nature introduced between March 2020 and July 2024 (Decree-Law No. 118/30 March 1990, Law No. 42 of 18 December 1990 and Law No. 341/12 July 2004 and Law No. 242/8 October 2021).

3.2. Granting Rights to Persons Persecuted for Political Reasons by the Communist Dictatorship (Decree-Law No. 118/30 March 1990)

In a succinct manner and to supplement the legal provisions of Decree-Law No. 3/1990, Decree-Law No. 118/30 March 1990 was adopted by the Provisional Council of National Unity to grant certain rights to persons who were persecuted for political reasons by the communist dictatorship, effective as of 6 March 1945.¹²

The reparative legislation provided for by Decree-Law No. 118/1990 refers to and regulates the legal situation of persons deported abroad, as well as of persons who, at the time of applying, no longer have Romanian citizenship, regardless of the location of their residence, provided that the legal conditions strictly regulated by this decree-law are met. Decree-Law No. 118/1990 regulates the length of service of a person who, for political reasons, served a prison sentence,¹³ was hospitalised in psychiatric hospitals,¹⁴ had a mandatory residence¹⁵ or was relocated to another locality.¹⁶

11 ibid, art 4.

12 Decree-Law of CFSN no 118 of 30 March 1990 'On the Granting of Rights to Persons Persecuted for Political Reasons by the Dictatorship Established Starting from March 6, 1945' (Decree-Law no 118/1990) [1990] Monitorul Oficial al României 50. Subsequently, the text was republished under art. III of Law No. 232/2020. Decree-Law was previously amended in 2009, 2013, 2014, 2015, 2016, 2017, 2018, 2019. The last amendment ordered by Government Emergency Ordinance no 115 of 14 December 2023 provides for a percentage increase of 13.8% of the level granted for the indemnities ordered by Decree-Law No. 118/1990 compared to the amount due for December 2023.

13 ibid, art 1 a).

14 ibid, art 1 b).

15 ibid, art 1 c).

16 ibid, art 1 d).

3.3. Honouring the Memory of the Heroes-Martyrs and Granting Rights to the Descendants and the Wounded in the December 1989 Revolution (Law No. 42 of December 18, 1990)

Law No. 42/1990 provides important regulations for the valorisation of the memory of the past and the honouring of those who lost their lives in the Revolution of December 1989.¹⁷ For transitional justice, the valuation of the past, the search for and reconstruction of historical and political truth, the consolidation and guaranteeing of citizens' rights and the rule of law represent fundamental values seen as a set of norms, practices and social-legal rules intended to ensure and substantiate the functionality of the society in transition.

In this context, Law No. 42/1990 adopted one year after the Revolution of December 1989, represented a necessary condition for reporting to the new social and legal order based on a system of rules and provisions arranged as a step of reconciliation with the past and of responsibility towards the present and the future that engages two essential principles of transitional justice; reparation and reform. The most important provisions refer to the area of responsibility and the establishment of a commission for conferring the title of "Fighter for the Victory of the Romanian Revolution of December 1989". Valorising the past and cherishing memory configures Article 1 of Law No. 42/1990 by legitimizing and establishing the title of "Hero-martyr of the Romanian Revolution of December 1989".¹⁸ The two titles are conferred by the President of Romania upon the proposal of a commission whose structure and organization are provided for by the annex to the law and in accordance with a regulation drawn up and adopted by a decision of the Romanian Parliament.¹⁹ In this perspective, another defining note in the transitional justice sphere, provided by Law no. 42/1990, emphasises the commitment to the descendants of the martyred heroes²⁰ and the wounded from the December 1989 Revolution.²¹

17 Law of Romania no 42 of 18 December 1990 'On Honoring the Martyred Heroes and Granting Rights to their Descendants, the Wounded, as Well as Fighters for the Victory of the December 1989 Revolution' [1990] Monitorul Oficial al României 147.

18 *ibid*, art 1.

19 *ibid*, art 4.

20 *ibid*, art 5.

21 *ibid*, art 6. Other legal provisions regarding the declaration of Brașov and Sibiu as martyr cities of the December 1989 Revolution were provided for by the provisions of Law No. 128/1992. By Laws Nos. 138/1994, 690/2001, 766/2001, 351/2002, 572/2003, the following localities were declared martyr cities: Arad, Brăila, Buzău, Târgoviște, Reșița, Alba-Iulia, Cugir, and Lugoj.

3.4. Gratitude for the Heroic Deeds of the Martyr Heroes (Law No. 341/12 July 2004 and Law No. 242/8 October 2021)

In the complex activity of drafting and adopting normative acts, an important place is occupied by Law No. 341/12 July 2004²² regarding the gratitude for the heroic deeds of the martyr heroes, in recognition of the prominent role of the fighters participating in the Romanian Revolution of December 1989, as well as from other localities in Romania, where the repression of the riots by the forces of order resulted in deaths, injuries or arrests.²³

From the perspective of the challenges of transition and transitional justice, the text of the law amended in 2014 expands on the initial explanation and consolidates society's gratitude towards the martyred heroes of the December 1989 Revolution.²⁴

On 11 October 2021, the new regulation provided for by Law No. 242/8 October 2021 provides clarity and order within the inter-societal relations between the state, citizen, society and the past and establishes and confers the Romanian Revolution of December 1989 the character of a "crucial moment in the country's history" through the disposition attributed to the concept of "deeply anti-communist."²⁵ The predominant position of Law No. 242/2021 in the evolution of transitional justice in Romania is also determined by a similar argument regarding the role of the Romanian Revolution of 1989 in gaining freedom, establishing a democratic regime and initiating the process of legal reforms.²⁶

The analysis of this normative framework represents a fundamental stage of transitional justice in post-communist Romania. It extends the framework of analysis to subsequent regulations on the accountability of authorities for the repair of damages and the restitution of victims' fundamental rights. In this approach, the next section addresses the legal rules governing the situation of residential buildings transferred to state ownership (Law No. 112 of November 25, 1995).

22 Law of Romania no 341 of 12 July 2004 'On Gratitude to the Martyred Heroes and Fighters Who Contributed to the Victory of the Romanian Revolution of December 1989' [2004] Monitorul Oficial al României 654. The text of the Law was modified through Law No. 199 of 4 November 2016 which changed its title 'On Gratitude for the Victory of the Romanian Revolution in December 1989, for the Anti-communist Workers' Uprising in Brașov in November 1987 and for the Anti-communist Workers' Uprising in the Jiu Valley - Lupeni - August 1977.'

23 These amendments were introduced by Art 1 of Law of Romania no 242 of 8 October 2021 'On the Amendment and Completion of the Law no 341/2004' (Law no 242/2021) [2021] Monitorul Oficial al României 965.

24 The amendments to the initial legal text of Art 2 were made on December 30, 2014 by Governmental Emergency Ordinance no 95 of 29 December 2014 'On Amending and Supplementing the Law no 341/2004' [2014] Monitorul Oficial al României 969, art 1, para 3.

25 Law no 242/ 2021 (n 23) art 1, para 1.

26 *ibid*, art 1.

3.5. Legal Situation of Residential Buildings, Transferred to State Ownership (Law No. 112 of November 25, 1995)

One of the most challenging issues in transitional justice jurisprudence and practice is the legal status of homes, buildings and properties.²⁷ In Romania, the first regulation of the field was ordered by Law No. 112/25 November 1995.²⁸

In this context, the law regulates the sector of reparative measures and provides legal provisions regarding former owners, individuals who were owners of real estate (housing) and whose property was transferred to state property after 6 March, with title. The second condition of the first article of the 1995 regulation, issued sixteen years after the 1989 Revolution, refers to the possession exercised of these properties on December 22, 1989. Thus, the law provides for remedial measures for properties transferred to the state's possession between 6 March 1945 and 22 December 1989. The third condition provided for by the new regulation is the provision in the first article, the second paragraph of which states that the heirs of the former owners also benefit from the new provisions under the conditions expressly provided for by the 1995 law.

The remedial measures in the second article refer to the restitution in kind provided for by the reacquisition of the right of ownership. The fourth condition, substantiated by Article 4 of Law 112/1995, provides that Romanian citizens benefit from the provisions of this law.²⁹ The provisions of the fourth section provide for the reparative measures and substantiate the legal framework for the establishment and granting of compensation to the former owners or, as the case may be, their heirs according to the provisions of Article 12. The two categories of persons (former owners and their heirs) are entitled to request compensation for the "unreturned apartments". The former owners and their heirs are also entitled to request compensation for the related lands or, if restitution in kind is not possible, to opt for compensation. The institutional governance mechanisms provide that the payment of compensation is made by the Romanian state, through the Ministry of Finance, via the decentralised public services of the ministry. The compensation procedure is triggered after 12 months from the conclusion of the evaluation works. In this case, the maximum term is 24 months. From the point of view of compensation value, these are established under the previous conditions and updated as of the payment date.

27 For a comprehensive analysis of the conceptual and analytical nexus between housing, land and property rights of individuals and communities in transitional justice see Jon D Unruh and Musa Abdul-Jalil, 'Housing, Land and Property Rights in Transitional Justice' (2021) 15(1) International Journal of Transitional Justice 1. doi:10.1093/ijtj/ijab004.

28 Law no 112 of 25 November 1995 'On Regulating the Legal Situation of Certain Residential Properties Transferred to the State' [1995] Monitorul Oficial al României 279.

29 *ibid*, art 4.

The basis for the remedial measures taken is the average wage in the economy from the last month of the previous quarter.³⁰

Another area of regulation during the Romanian transition period was reflected in the restitution of immovable property of communities of citizens belonging to national minorities (Emergency Ordinance No. 83/ 8 June 1999). For this legal context, the set of compensatory measures was ordered by Emergency Ordinance No. 83/ 8 June 1999,³¹ which regulates the legal situation of the properties that belonged to the communities of national minorities in Romania and that were taken over with or under the title of the Romanian State or by cooperative organisations or other legal entities. From the point of view of the regulatory framework, the Emergency Ordinance No. 83/ 8 June 1999 provides for the measure of restitution to the former owners under the conditions provided for in Article 1 and Article 2 of this ordinance. In this case, the institutional governance mechanism refers to the procedure for submitting the restitution application to the Special Restitution Commission.³²

In 2001, the new legal status of buildings confiscated abusively between 6 March 1945 and 22 December 1989 (Law No. 10/2001)³³ defines the properties taken over abusively during this period and regulates with priority the following situations: nationalized properties with reference to the “nationalization of industrial, banking, insurance, banking and insurance, mining and transport enterprises,”³⁴ the situation of real estate taken over following the confiscation of property, the situation of real estate donated to the state or other legal entities.³⁵

Other important regulations were issued by Law No. 165 of 16 May 2013³⁶ which has in its first article the important provision regarding the principle of restitution in kind of real

30 For a detailed overview, see *Dickmann and Gion v Romania* App ns 10346/03, 10893/04 (ECtHR, 24 October 2017) <<https://hudoc.echr.coe.int/eng?i=001-177927>> accessed 28 September 2025. In this judgment, the European Court of Human Rights (ECtHR) summarised the relevant provisions and principles on reparation measures.

31 Law 112/1995 was approved with amendments by Law no 66/2004 (Monitorul Oficial al României I 278/30 March 2004), and was further amended and supplemented in 1999, 2000 and 2004.

32 The Special Restitution Commission was established pursuant to Government Emergency Ordinance no 94 of 29 June 2000 ‘On Regulating the Restitution of Immovable Property that Belonged to Religious Denominations in Romania’ [2005] Monitorul Oficial al României 797.

33 Law of Romania no 10 of 8 February 2001 ‘On the Legal Regime of Real Estate Taken Over Abusively Between March 6, 1945 and December 22, 1989’ (Law no 10/2001) [2001] Monitorul Oficial al României 75.

34 *ibid*, art 2(1)(a)

35 *ibid*, art 2(c).

36 Law of Romania no 165 of 16 May 2013 ‘On Measures for Completing the Process of Restitution, in Kind or by Equivalent, of Real Estate Abusively Taken Over During the Communist Regime in Romania’ (Law no 165/2013) [2013] Monitorul Oficial al României 278.

estate taken over abusively during the communist regime in Romania.³⁷ In the context of the analysis of the conceptual and legal landmarks of transitional justice in Romania, Article 2 and Article 3 of Law No. 165 of 16 May 2013 hold particular importance. Article 2 establishes the four principles governing the measures for completing the restitution process of properties taken abusively during the communist period in Romania³⁸ namely The principles underlying the granting of the measures provided for by this law are 1) the principle of the prevalence of the measure of restitution in kind of the property taken back abusively;³⁹ 2) the principle of equity;⁴⁰ 3) the principle of transparency;⁴¹ d) the principle of "maintaining a fair balance" between the individual interest of the former owners and the general interest at the level of society.⁴² Article 3 presents and defines the legal expressions and terms provided for in the new regulation, namely: requests, "person who feels entitled", as well as regulations regarding the "entity vested by law" with reference to the process of restitution of abusively taken properties and the framework for ordering and establishing remedial measures.⁴³

Twelve years after the adoption of Law No. 165/2013, the Constitutional Court of Romania decided by a majority of votes to issue the exception of unconstitutionality, judging as unconstitutional sentence "taking into account the technical characteristics of the building and the category of use on the date of its takeover" as regulated by the provisions of Article 21 of Law No. 165/2013.⁴⁴ The latest decision of the Constitutional Court of Romania was communicated through the press release of 18 February 2025.⁴⁵ The 2025 decision of the Constitutional Court of Romania concerns measures ordered to complete the restitution process, taking into account both regulated situations, namely restitution in kind or by equivalent, of real estate taken over abusively during the communist dictatorship in Romania.

37 See, for instance, the decisions of the ECtHR, namely: *Văleanu and Others v Romania* App nos 59012/17 and 29 others (ECtHR, 8 November 2022) <<https://hudoc.echr.coe.int/eng?i=001-220571>> accessed 28 September. For a more general context but also to highlight the circumstances of the case, see: *Maria Atanasiu and Others v Romania* App nos 30767/05, 33800/06 (ECtHR, 12 October 2010) <<https://hudoc.echr.coe.int/eng?i=001-100989>> accessed 28 September 2025. The ECtHR judgment describes in detail the complex mechanisms of restitution, by indicating to Romania, in its capacity as respondent State, the need to impose the adoption of measures for the more efficient processing of applications in the field.

38 Law no 165/2013 (n 36) art 2.

39 *ibid*, art 2 (a).

40 *ibid*, art 2 (b)

41 *ibid*, art 2 (c).

42 *ibid*, art 2 (d).

43 *ibid*, art 3.

44 *ibid*, art. 21(6).

45 Curtea Constituțională a României, 'Comunicat de presă, 18 februarie 2025' (Constitutional Court of Romania, 18 February 2025) <<https://www.ccr.ro/comunicat-de-presa-18-februarie-2025/>> accessed 30 September 2025.

In essence, the Court assessed that by reporting and correlating the method of calculating the compensations that the state must offer for the buildings taken over abusively during the communist regime in Romania⁴⁶ with the technical characteristics and the category of use they had at the time of the takeover, the constitutional provisions regulated by the provisions of Article 44 of the Romanian Constitution⁴⁷ are violated, which explicitly refer to the guarantee and protection of property rights private. assessed that by reporting and correlating the method of calculating the compensations that must be offered by the state for the buildings taken over abusively during the communist regime in Romania with the technical characteristics and the category of use they had at the time of the takeover, the constitutional provisions regulated by the provisions of Article 44 of the Romanian Constitution are violated, which explicitly refer to the guarantee and protection of private property rights.

The next section of the research is dedicated to the legal-doctrinal analysis of lustration measures centred on application criteria, individualisation of responsibility, access to public offices and dignities. The analysis also integrates a review of constitutionality and the limits of the normative framework's application in the exercise of civil and political rights.

4 LUSTRATION LEGISLATION INNITIATIVES IN ROMANIA

Several legislative proposals for an organic law on lustration, on the temporary limitation of access to public dignities and positions for persons who were members of the power structures of the former communist regime and of the repressive apparatus of the Romanian Communist Party,⁴⁸ some scholars referred to the entire process after 1989 as a failure.⁴⁹ Others opposed such projects, arguing that such an endeavour would not benefit a democratic society.⁵⁰ In 2005, a legislative proposal was laid down by three deputies and one senator.

⁴⁶ For a comparative and comprehensive analysis see Evan Hochberg, 'Toward a Fair and Just Comprehensive Property Restitution Law in Poland' (2019) 41(3) Loyola of Los Angeles International and Comparative Law Review 727.

⁴⁷ In its original form, the Constitution of Romania was adopted at the meeting of the Constituent Assembly on November 21, 1991, see: Constitution [1991] Monitorul Oficial al României 233.

⁴⁸ For a comprehensive examination of the legislative process and parliamentary practices in Romania, see Pl no L642/2005 'Legislative proposal regarding the Lustration Law, regarding the temporary limitation of access to certain public functions and dignities for persons who were part of the power structures of the communist regime and of the repressive apparatus of the Romanian Communist Party' <https://www.senat.ro/legis/lista.aspx?nr_cls=L642&an_cls=2005> accessed 2 October 2025.

⁴⁹ Lavinia Stan, 'Lustration in Romania: The Story of a Failure' (2006) 6(1) Studia Politica: Romanian Political Science Review 135; Dragoş Petrescu, 'Dilemmas of Transitional Justice in Post-1989 Romania' in Vladimira Dvořáková and Andelko Milardović (eds), *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe* (Political Science Research Centre Zagreb 2007) 127.

⁵⁰ For a comparative analysis of lustration programs in Romania and Poland see Cynthia M Horne, 'Late Lustration Programmes in Romania and Poland: Supporting or Undermining Democratic Transitions?' (2009) 16(2) Democratization 344. doi:10.1080/13510340902732581.

The project had a 60-day term in the Senate, as the first reported chamber, where it received a negative opinion from the Commission on public administration, territorial organisation, and environmental protection. The Senate further approved the extension of the term of tacit adoption to 60 days; the Commission for equal chances rejected the project, while it received a favourable opinion from the Commission for human rights, cults and minorities and the Juridical Commission for appointments, discipline, immunities and validations.⁵¹

In April 2006 the Senate adopted the lustration legislative proposal with 69 votes in favour, 49 against and 9 abstentions, under the title "Legislative proposal on lustration, regarding the temporary limitation of access to some public positions and dignities to persons part of power structures and the repressive apparatus of the communist regime"⁵² while the Deputies' Chamber adopted the proposal in May 2010 under the form "Lustration law, regarding the temporary limitation of access to some public positions and dignities to persons which were members of power structures and the repressive apparatus of the communist regime during 6 March 1945 – 22 December 1989."⁵³

The act was sent to the President of Romania for promulgation; however, 29 senators and 58 deputies declared it unconstitutional. In its decision no 820/2010, the Constitutional Court declared some legislative provisions as unconstitutional.⁵⁴ Throughout October 2010–April 2011, the law was placed on the agenda of the Senate plenary session, which rejected the project. The Constitutional Court ruled against the constitutionality of some legislative provisions in its Decision No. 308/2012.⁵⁵ In February 2013, the Senate rejected the project, and in March 2013, the Deputies' Chamber rejected it.

For comparison, in other post-communist states, the analysis of the lustration regime also requires evaluating both constitutional requirements and the relevance of ECtHR jurisprudence, as in *Matyjek v. Poland*.⁵⁶ In this case, the ECtHR has established a

51 For a general analysis of the regulatory framework, stages, procedures, and debates within the legislative process in Romania, see Pl no L642/2005 (n 48).

52 According to the Senate meeting transcript, see Pl no L642/2005 (n 48).

53 Camera Deputatilor, 'Sittings of the Chamber of Deputies of May 19, 2010' <<https://www.cdep.ro/pls/steno/stenograma?ids=6833&idm=3>> accessed 3 October 2025.

54 Decision no 820 'On Regarding the Objection of Unconstitutionality of the Provisions of the Lustration Law, Regarding the Temporary Limitation of Access to Certain Public Functions And Dignities For Persons Who Were Part Of The Power Structures And The Repressive Apparatus Of The Communist Regime During the Period 6 March 1945 - 22 December 1989' (Constitutional Court of Romania, 7 June 2010) [2010] Monitorul Oficial al României 420.

55 Decision no 308 'On Regarding the Notification of Unconstitutionality of the Provisions of Art 1 Lit g) of the Lustration Law Regarding the Temporary Limitation of Access to Certain Public Functions and Dignities for Persons Who Were Part of the Power Structures and the Repressive Apparatus of the Communist Regime During the Period 6 March 1945 - 22 December 1989' (Constitutional Court of Romania, 28 March 2012) [2012] Monitorul Oficial al României 309.

56 For a detailed overview, see *Matyjek v. Poland* App no 38184/03 (ECtHR, 24 April 2007) <<https://hudoc.echr.coe.int/fre?i=001-80219>> accessed 28 September 2025. By this judgment, ECtHR stated the need for lustration procedures to provide sufficient procedural guarantees by virtue of European guarantees on the right to a fair trial.

European standard to ensure and guarantee compliant and adequate procedural protection with respect to access to the file, preparation of the defence, and equality of the parties. Another relevant case for the analysis of the lustration regime is *Sidabras and Džiautas v. Lithuania*.⁵⁷ The ECtHR decision adopted in this case on 27 July 2004 highlights the importance of striking a balance between institutional governance mechanisms and the protection of individual rights.

5 PREPARATIONS FOR THE INTEGRATION INTO THE EUROPEAN AND EURO-ATLANTIC STRUCTURES

A set of restorative justice measures was adopted by Romanian authorities in line with the country's preparations for integration into the European and Euro-Atlantic structures, as part of legal reforms in the democratization endeavours. Retributive justice in Romania thus followed the path of further public declarative condemning the communist past crimes while compensating the victims of the communist regime. Consequently, Romanian constitutional democracy relied on its reconciliation with the communist past in regulating the access to the judiciary, further redistributive and reparatory measures for victims abused by the communist regime, opening and granting access to the study of the former Securitate archives, investigating the communist crimes in Romania and publicly condemning the communist regime.

5.1. Regulating the Statute of Judges and Prosecutors (Law 303/2004)

Since 2004, Law 303/2004 on the statute of judges and prosecutors (amended on 8 October 2007) has made it impossible for former Securitate collaborators to access the status of judge or prosecutor. It imposed an obligation on judges, prosecutors, and magistrates to declare any activity of the secret service political police as collaboration with the former Securitate organs, a declaration verified by the National Council for the Study of the Securitate Archives (CNSAS).⁵⁸

⁵⁷ For a comprehensive overview, see *Sidabras and Džiautas v Lithuania* App nos 55480/00, 59330/00 (ECtHR, 27 July 2004) <<https://hudoc.echr.coe.int/eng?i=001-61942>> accessed 28 September 2025. The ECtHR judgment notes the circumstances of access to positions according to the provisions of Lithuanian legislation, stating the need for uniform application of the principle of equal treatment in the context of transition.

⁵⁸ Law of Romania no 303 of 28 June 2004 'On the Statute of Judges and Prosecutors' (amended 8 October 2007) art 6 <<https://legislatie.just.ro/Public/DetaliiDocument/53074>> accessed 2 October 2025.

5.2. Creating the Property Fund (2005) (Governmental Decision 1481/2005 on the Creation of the Property Fund)

At the end of December 2005, the Government created the Property Fund ("Fondul Proprietatea") as a joint stock company listed on the Bucharest Stock Exchange in 2011, aiming to ensure the financial means to compensate the former victims abusively expropriated by the communist regimes in case the restitution in nature was not possible.⁵⁹ Thus, policy-making undertook this form of compensatory property restitution for shareholders whose properties were violently nationalised by the communist state. For this purpose, the legislature created the Central Commission for Establishing Compensation through Law 247/2005 regarding the reform in the field of property and justice. It instituted an extensive set of reparatory measures for persons whose properties were abusively taken over between 6 March 1945 and 22 December 1989,⁶⁰ for the restitution of buildings belonging to religious cults,⁶¹ for the restitution of buildings belonging to national minorities in Romania,⁶² and for the regime of quantifying the payments of compensations for buildings taken abusively.⁶³ Furthermore, in 2007, the Government adopted the Governmental Emergency Ordinance 81/2007 for accelerating the procedure of granting compensations for abusively confiscated properties. The act regulates the functioning of the Property Fund as a closed investment joint stock company "with the state as its initial sole shareholder, until the transmission of shares from state property to natural or legal persons".⁶⁴

5.3. Extending the Study of Securitate Archives and the activity of the National Council for the Study of the Securitate Archives (GEO 149/2005 and GEO 16/2006)

During 2005-2006, Romania reinforced its efforts to denounce the activities of the former secret police and to make public the identities of former collaborators and informers. In 2005, through Governmental Emergency Ordinance 149/2005 on Measures Extending the

59 For a detailed presentation of the institution and the regulatory framework, see 'Despre Fondul Proprietatea' (*Fondul Proprietatea*, 2025) <<https://www.fondulproprietatea.ro/ro/despre-fond/despre-fondul-proprietatea>> accessed 2 October 2025.

60 Law of Romania no 247 of 19 July 2005 'On Regarding Reform in the Field of Property and Justice, as Well as Some Adjacent Measures' [2005] Monitorul Oficial al României 653, title I.

61 *ibid*, title II.

62 *ibid*, title III.

63 *ibid*, title VII.

64 Governmental Emergency Ordinance no 81 of 28 June 2007 'On Accelerating the Procedure of Granting Compensations for Abusively Confiscated Properties' [2007] Monitorul Oficial al României 446, art 7 (1).

Activity of the National Council for the Study of Securitate Archives,⁶⁵ the Government extended the activity of the National Council for the Study of the Securitate Archives, whose mandate was set to expire six years after its establishment in 1999.⁶⁶ Also, through Governmental Emergency Ordinance No. 16/2006 of 22 February 2006 on the amendment of Law No. 187/1999 regarding the access to one's personal file and denouncement of Securitate as political police by granting the access on demand to "the identity of agents and collaborators who have contributed with information to the completion of the file."⁶⁷ Also, the amendments regulate the denouncing of this quality and informing "the written press and the audio-visual, political parties, legally constituted NGOs, public authorities and institutions on demand" as regards candidates to presidential elections⁶⁸ and other positions or dignities, such as those within prefectures, mayoralties and county de-centralized public services,⁶⁹ management positions within the Romanian Information Service (SRI), External Information Service (SIE), Protection and Guard Service (SPP), Special Telecommunication Service (STS), General Direction of information and Internal Protection, the Ministry of Administration and Interior,⁷⁰ management positions within the police,⁷¹ judges, prosecutors, prime-registrars, lawyers and public notaries,⁷² diplomatic and consular staff,⁷³ management and execution positions in the Legislative Council and other national authorities and agencies,⁷⁴ members of the press and political analysts,⁷⁵ members of the academia,⁷⁶ inspectors and management of schools and education units and members of cultural institutions,⁷⁷ leadership of political parties,⁷⁸ military and civil leadership within the Ministry of National Defence and the army.⁷⁹

65 Governmental Emergency Ordinance no 149 of 10 November 2005 'On Regarding Some Measures to Ensure the Continuation of the Activity of the National Council for the Study of Securitate Archives' [2005] Monitorul Oficial al României 1008.

66 Law of Romania no 187 of 7 December 1999 'On Regarding the Access to One's Personal File and Denouncement of Securitate as Political Police' [1999] Monitorul Oficial al României 603, art 22.

67 Governmental Emergency Ordinance no 16 of 22 February 2006 'On the Amendment of Law no 187/1999 Regarding the Access to One's Personal File and Denouncement of Securitate as Political Police' [2006] Monitorul Oficial al României 182, art 1(2).

68 *ibid*, art 2.

69 *ibid*, art 2 (e).

70 *ibid*, art 2 (f).

71 *ibid*, art 2 (g).

72 *ibid*, art 2 (i).

73 *ibid*, art 2 (i).

74 *ibid*, art 2 (k).

75 *ibid*, art 2 (n).

76 *ibid*, art 2 (r).

77 *ibid*, art 2 (s).

78 *ibid*. art 2 (§).

79 *ibid*, art 2 (t).

6 CREATION OF THE INSTITUTE FOR THE INVESTIGATION OF COMMUNIST CRIMES IN ROMANIA (2005) AND PRESIDENTIAL COMMISSION FOR THE ANALYSIS OF COMMUNIST DICTATORSHIP IN ROMANIA (2006)

In 2005, the Government issued Decision No. 1724 to create the Institute for the Investigation of Communist Crimes in Romania, subordinated to the Government and coordinated by the prime minister.⁸⁰ Endowed with legal personality, the institute's mandate empowers its employees "to investigate and identify crimes, abuses and violations of human rights during the entire duration of the communist regime in Romania" and to further submit these data and evidence related to crimes and persons to institutions capable of following legal penal action in this respect⁸¹ and to the public opinion.⁸² To this end, the institute's mandate encompassed the classification of crimes and criminals,⁸³ the identification of former nomenklatura activists, Securitate members, and political police,⁸⁴ and the systematisation of regulations that organised the coercive system.⁸⁵

On 20 April 2006, a Presidential Commission was established by presidential Decree to analyse the communist dictatorship in Romania and produce a report. Following its investigative analysis of communist archives, the Commission issues its final report. In more than 600 pages, the report⁸⁶ structures accounts on the Romanian Communist Party, fraudulent elections, external Soviet involvement, civil society destruction and communist society transformation, the Repression, purges, concentration system, communist genocide, Security crimes and methods and dissidence movements and society, economy, and culture with evidence on demography, economic crisis, ideology and culture, repression and total control, and brings forward the arguments for the official condemnation of the regime.⁸⁷

80 Government Decision no 1724 of 21 December 2005 'On the Establishment of the Institute for the Investigation of the Crimes of Communism in Romania' [2005] Monitorul Oficial al României 1195, art 1(1).

81 *ibid*, art 2.

82 *ibid*, art 3 (h).

83 *ibid*, art 4 (a).

84 *ibid*, art 4 (b).

85 *ibid*, art 4 (c).

86 At present, the Report can be accessed at the following site: Vladimir Tismăneanu and others, *Final Report of the Presidential Commission for the Analysis of the Communist Dictatorship in Romania* (Bucureşti, USA 2006) <<https://coilink.org/20.500.12592/7k1kz49>> accessed 13 November 2025.

87 For discussions on the Presidential Commission's activity, see Monica Ciobanu, 'Criminalising the Past and Reconstructing Collective Memory: The Romanian Truth Commission' (2009) 61(2) Europe-Asia Studies 313. doi:10.1080/09668130802630870; Cosmina Tanasoiu, 'The Tismăneanu Report: Romania Revisits Its Past' (2007) 54(4) Problems of Post-communism 60. doi:0.2753/PPC1075-8216540405; Mihai Stelian Rusu, 'Transitional Politics of Memory: Political Strategies of Managing the Past in Post-communist Romania' (2017) 69(8) Europe-Asia Studies 1257. doi:10.1080/09668136.2017.1380783.

Consequently, on 18 December 2006, during a solemn session within the Parliament of Romania in which the Presidential Commission for the Analysis of the Communist Dictatorship in Romania presented its Report, the Chief of State delivered a message in which he announced the accomplished mission of the Commission to identify “the reasons whereby I can condemn the communist regime” after a “rigorous analysis of the components of the totalitarian system, of the principal institutions that made this tragedy possible, and of the personages decisively implicated in the system”⁸⁸ evidence which thus allows to “expressly and categorically condemn the communist system in Romania, from its foundation, on the basis of dictate, during the years 1944 to 1947, to its collapse in December 1989. Taking cognizance of the realities presented in the Report, I affirm with full responsibility: the communist regime in Romania was illegitimate and criminal.”⁸⁹ Moreover, the message delivered “public apologies” claiming that “in the name of the Romanian State, I ask the forgiveness of those who suffered, of their families, of all those who, in one way or another, saw their lives ruined by the abuses of dictatorship.”⁹⁰ Thus, the message of the establishment of the Presidential Commission, the adoption of the Commission Final Report and the condemnation of the former communist regime must be understood within the logic of the political climate.⁹¹

A noticeable movement of remembering through tourism and artwork has been developing through the organisation of guided tours, museums, and various artistic manifestations of memory and cultural anamnesis.⁹² In addition, education, rewriting school curricula, memorials and museums contributed to the public acknowledgement of communist crimes.

88 For implications of the use of “genocide” concept see Sabina-Andreea Grigore, ‘The Narrow Definition of Genocide & Its Role in Investigating and Prosecuting Charges of Genocide in Romania’ (2025) 72(1) *Problems of Post-Communism* 97. doi:10.1080/10758216.2024.2337944.

89 For a thorough analysis of the establishment of communism in Romania see Vladimir Tismăneanu (ed), *Stalinism Revisited: The Establishment of Communist Regimes in East-Central Europe* (Central European UP 2009). Also, for a view on the fall of communism see Vladimir Tismaneanu, ‘Eastern Europe: The Story the Media Missed’ (1990) 46(2) *Bulletin of the Atomic Scientists* 17. doi:10.1080/00963402.1990.11459793.

90 Traian Băsescu, *Speech delivered within the Parliament of Romania*, 18 December 2006, to mark the Presentation of the Report by the Presidential Commission for the Analysis of the Communist Dictatorship in Romania, see: Traian Basescu, ‘Discursul presedintelui Traian Basescu’ (*HotNews.ro*, 18 December 2006) <<https://hotnews.ro/discursul-presedintelui-traian-basescu-826051>> accessed 2 October 2025.

91 Alexandru Gussi, ‘Some Thoughts on the Transitional Justice Dilemmas in the Romanian Post-communist Context’ (2015) 15(2) *Studia Politica: Romanian Political Science Review* 211.

92 For the use of tourism in communism remembrance see Dukan Light, Remus Crețan and Andreea-Mihaela Dunca, ‘Transitional Justice and the Political “Work” of Domestic Tourism’ (2020) 24(6) *Current Issues in Tourism* 742. doi:10.1080/13683500.2020.1763268. For the concept of “recuperative memory” see Simona Mitroiu, ‘Recuperative Memory in Romanian Post-communist Society’ (2016) 44(5) *Nationalities Papers* 751. doi:10.1080/00905992.2016.1182144.

7 CONCLUSIONS

The current research argues that transitional justice in Romania served as an integrative element of the country's democratic journey after the Revolution of December 1989 and contributed fundamentally to its integration into European and Euro-Atlantic structures. The study also identifies that transitional justice played an essential role in the process of sustainable development and in the construction of a viable, valid, and legitimate political and social pluralism after the collapse of the communist regime. Thus, the results of the legal analysis demonstrate that transitional justice addressed social exclusion and provided redress for the victims who suffered under the communist dictatorship, whose fundamental human rights and freedoms had been violated. Second, the construction, reform and reconfiguration of a judicial system addressed both structural and social injustices and contributed to strengthening the rule of law, guaranteeing free access to justice and protecting democratic rights and freedoms.

The research has succeeded in providing a rigorous chronological and topical description of transitional justice mechanisms and legal reforms, including recent Constitutional Court decisions, by showing the synchrony between these policies, ventures of restorative justice, rule-of-law enactment, and democratisation, and Romania's goals of European and Euro-Atlantic integration. It highlighted the principles of balancing individual restitution interest and the general societal reconciliation goals outlined in the legislative reasoning of several legal and judicial measures. Within the jurisprudential analysis, the doctrinal examination pointed out the extent to which national legal provisions were correlated to European normative standards in the matter of transitional justice for the protection and guarantee of human rights, the reform that shaped the evolution of judicial practice and the installation of reparative mechanisms and instruments, as well as the institutional governance. The narrative-descriptive discussion of the policy-making process, implementation criteria and the limits of the application of the normative framework, pointing out the extent of achieving the outcomes of transitional justice in Romania.

At the same time, the study also highlights several limitations that have affected the impact of transitional justice, including the institutional and functional cleavages between the reformist judicial system and the various administrative, social and political structures and mechanisms. Second, the postponement or delayed adoption of reform initiatives in the judicial system and the factors for the justice reform process and for institutional and social governance influence the democratic consolidation of the state.

Throughout the study, the discussion of the evolution of transitional justice mechanisms embedded in the Romanian legislative framework and constitutional and judicial practice relating to reparations, property restitution, accountability, and human rights was intended to assess their contribution to the consolidation of democracy, trust in public institutions, and civic reconciliation. The research discussed the limitations of some policy initiatives and vulnerabilities to the political will of Romanian transitional justice mechanisms in

establishing accountability for the crimes and abuses of the former totalitarian regime. These impediments had considerable societal impact, considering the restoration of truth and lustration expectations and the actual progress, the recognition of communist victims and martyred revolutionaries, public awareness and the perils of oblivion, trust in state institutions. The political impact of transitional justice measures is salient considering lustration's mild effects, judicial accountability of former communist offenders and the uncovering of collaborators to the Securitate secret police. These aspects influenced governmental stability on some occasions, but also, depending on the political context, determined the handling by political decision-makers of initiatives to denounce the communist crimes and abuses, and to claim a democratic path for the Romanian state. Hence, transitional justice became an agent of calibration to European standards to strengthen democratisation and the rule of law.

Accordingly, the research substantiated the hypothesis stating that, in Romania, regulations regarding the accountability of the authorities, regarding the reparation of damages and the restitution of the fundamental rights of victims rested on political will and were contingent on the overall political context, thus contributing to the scholar's vision on transitional justice and post-communist transition.

Therefore, this research concludes that the mechanisms of transitional justice have fundamentally changed the way democracy, rights, and freedoms have been consolidated in post-communist Romania, with implications and effects across the political and social spectrum. First, encouraging social cohesion and social pluralism has become a main objective for configuring the new system of social governance. Second, assessing the impact of restoring rights and establishing the social rights of citizens. Third, the reform of the judicial system has confronted both institutional causes and systemic causes generated by concerns for systemic stability and security.

Future research on transitional justice in Romania could highlight the stage of implementation of legal provisions regarding the rights of victims of the communist dictatorship, but also of legislation regarding the recognition of rights and gratitude to the martyred heroes of the Romanian Revolution of December 1989. A second aspect necessary for future research is the role of authorities in institutional reform, with consequences for transitional measures and social justice. The third aspect will monitor the stage of implementation of decisions of national and European courts regarding the rights of individuals and communities affected by the abusive takeover of real estate.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

МЕХАНІЗМИ ПЕРЕХІДНОГО ПРАВОСУДДЯ ТА СУСПІЛЬНЕ ПРИМИРЕННЯ ДЛЯ ВЕРХОВЕНСТВА ПРАВА ТА КОНСОЛІДАЦІЇ ДЕМОКРАТІЇ В ПОСТКОМУНІСТИЧНІЙ РУМУНІЇ. ЮРИСПРУДЕНЦІЙНІ ПЕРСПЕКТИВИ ПРАВ НА ВІДШКОДУВАННЯ, ЛЮСТРАЦІЇ ТА РЕЖИМУ ВЛАСНОСТИ

Анка Пармена Олімід*, Каталіна Марія Джорджеску та Космін Лучіан Герге

АНОТАЦІЯ

Вступ. Крах комуністичного режиму в Румунії в грудні 1989 року спричинив етап глибоких та складних законодавчих змін, спрямованих на усунення зловживань, дискримінації та порушень прав, що спричинило виклики для процесу реформування системи правосуддя та для інституційного та соціального управління. Реформа держави та процес європейської

інтеграції призвели до дебатів у суспільстві та правових ініціатив, спрямованих на гарантування прав і свобод громадян та сприяння соціальному примиренню. У цьому контексті засудження комуністичних злочинів, визнання зловживань, відновлення права власності та спроби люстрації представляли два центральні рівні політичної та судової реформи в посткомуністичній Румунії. Це дослідження має на меті дослідити, як ці законодавчі ініціативи, а також інші пов'язані з ними регуляторні підходи, були законодавчо закріплені відповідно до стандартів та зобов'язань щодо європейської та євроатлантичної інтеграції.

Методи. У дослідженні пропонується якісний підхід, який охоплює як документальний аналіз законодавчих пропозицій, так і ініціатив, об'єднуючи три основні теми: (1) перехідне правосуддя, визнання та надання прав особам переслідуванням з політичних міркувань та вшанування пам'яті героїв-мучеників грудневої революції 1989 року; (2) законодавчі ініціативи щодо відновлення права власності, правового стану житлових будинків, раніше переданих у державну власність, регулювання статусу суддів та прокурорів; та (3) законодавча підготовка щодо інтеграції в європейські та євроатлантичні структури, а також ініціативи щодо створення інституційних структур з розслідування комуністичних злочинів та аналізу комуністичної диктатури. Для вивчення цих тем було використано методи, характерні для правового дослідження, такі як: (a) нормативний аналіз та вивчення текстів законів, декретів-законів та постанов виконавчої влади, ухвалених та виданих у комуністичний період; (b) аналіз судової практики, здійснений за допомогою вивчення рішень Європейського суду з прав людини (ЄСПЛ), аналіз винятків щодо неконституційності, висунутих Конституційним судом Румунії у питанні реституції майна та застосування закону в цій галузі, та (c) історико-правовий аналіз, необхідний для зіставлення законодавчих реформ та ініціатив з політичним та історичним контекстом, відповідно до трьох хронологічних меж аналізу: падіння режиму, політичний перехід та інтеграція в європейські та євроатлантичні структури.

Результати та висновки. Дослідження вказує на нерівномірну еволюцію нормативної бази, що характеризується проблемами фрагментації в процесі законодавчої реформи щодо визнання жертв, реституції майна та соціального примирення. Незважаючи на ці правові, політичні та соціальні контексти, дослідження підкреслює як законодавчий прогрес, так і суспільні переваги перехідного правосуддя в Румунії, а також можливість такого аналізу, проведеного через тридцять п'ять років після грудневої революції 1989 року, для розвитку правової культури, зосередженої на повазі до прав людини та консолідації верховенства права в суспільствах перехідного періоду.

Ключові слова. Перехід Румунії до демократії, реституція майна, історико-правовий аналіз, перехід від комуністичної диктатури, права людини.