TRUTH AND RECONCILIATION COMMISSIONS AND LEGAL ORDER

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Abstract

The transition periods from abusive regimes to democratic ones put into action, among others, mechanisms such as Truth and Reconciliation Commissions, non-judiciary instruments of transitional justice, through which generalised abuses committed in the recent past of a country are investigated. Legal order is considered an indispensable foundation in establishing a state and in maintaining and, respectively, consolidating democracy. Starting from the theoretical-explanatory model of law philosophy that places the human being at the centre of lawmakers' preoccupations, the present paper intends to show, at least at the theoretical level, the connection between the founding/functioning of Truth and Reconciliation Commissions and legal order. In the first part of the paper I will define legal order and the insoluble connection between it and judicial order. In the second part, I will explain the peculiarities of Truth and Reconciliation Commissions so as to show, in the last part, how the principles and their manner of functioning constitute the premises necessary for the configuration of the new rule of law, in societies marked by transition periods, as a result of experiencing systematic and generalised abuses.

The paper has a heuristic value by showing, through the issue set forward, the concept of law as the art of good and equity – jus est are boni et aequi – promoted by Celsius.

Keywords: *Truth and Reconciliation Commissions, transitional justice, legal order, judicial order, judicial norm.*

1. Introduction

The autonomy of law is not equivalent with its isolation from social and political contexts. The theoretical lens of law philosophy promotes the idea that the state, the constitution, and the institutions have a historical, political, judicial, and social character. When a state creates its rule of law and guarantees its fulfilment, it bases it on certain principles[1] such as justice, equity, respect for individuals' fundamental rights, for human dignity. How can these desiderata be fulfilled? What connection is there between legal order and the rule of law? The rule of law is founded on the principles of separation of powers in a state – which does not exclude the interaction between them – and the independence of the act of justice, on respecting human rights and on equality before the law of all citizens, no matter whether they are part of the governing or the governed. It is worth mentioning that in the case of totalitarian and authoritarian regimes these principles are not practically applicable.

On the other hand, Maurice Hauriou[2] considers that without legal order, neither the stability of a state nor the maintenance and, respectively, the consolidation of democracy can be conceived. Legal order signifies an organization of social relations based on judicial norms that form judicial order. However, legal order presupposes respecting individuals' liberties, rights, and integrity, of the rule of law, and of its functioning mechanisms and, on the other hand, it is determined by the latter.

Legal order becomes a democratic principle, guaranteed by state bodies. Judicial order represents the normative base of the legal order, while its state bodies ensure its applicability framework. Putting these mechanisms in operation ensures the security of individuals and societies. The main purpose of legal order is to offer consistency to individual rights and liberties within a society, to materialise the principle of equality before the law, in the interest of both the individuals and the state. All of these desiderata regarding legal order represent real challenges for the societies that have been confronted in the past with periods of systematic and generalised abuses. In this sense, transitional justice entails a series of actions as a response to the massive human rights violations, namely: exposing the truth about past abuses, holding the perpetrators responsible,

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[1] „If the principle of legality was added by states into the most important normative acts, both nationally and internationally, the same cannot be said about morality" (my translation) authored by E.E. Ștefan, *Legalitate şi moralitate în activitatea autorităţilor publice*, in Revista de Drept Public no. 4/2017, Universul Juridic Publishing House, Bucharest, p. 96.

[2] M. Hauriou, *Aux sources du droit, Le pouvoir, l'ordre et la liberté,* Paris: Caen, Centre de Philosophie Politique et Juridique.

offering reparations to the victims and fundamentally reforming the state and social institutions. Pablo de Greiff considers that *penal justice represents an endeavour against those guilty, without direct focus on the victim*.

Transitional justice brings a novelty element, namely, focus on the victim and proposal of a set of material and/or symbolic set of reparatory measures. The Truth and Reconciliation Commissions represent a specific instrument of transitional justice, which, together with judicial processes, reparatory programmes, and institutional reform, ensure the transition towards a new type of legal order, towards a new type of society. In fact, the *four main mechanisms* of transitional justice are in accordance not only with the obligations of the *states* in international law, but also with respecting *individual* rights that correspond to these obligations.[3] *Judicial processes* represent the states' obligation to investigate and punish those guilty of abuses, thus ensuring, at the individual level, *the right to justice and an adequate solution*. *The Truth and Reconciliation Commissions* implement the states' obligation to investigate and identify abusers and victims that, at the individual level, is equivalent to *the right to the truth*. *Reparatory programmes* involve the states' obligation to implement restitutions and compensations for the victims' whose rights were violated, in other words, *an individual right to reparations*. *Institutional reform* signifies the reform of institutions from the judicial, administrative, political etc. systems and reiterates the states' obligation to prevent similar acts, meaning the individuals' right to have *non-repetition* guaranteed. The present paper proposes a focus on the relationship between the principles that govern the creation/functioning of Truth and Reconciliation Commissions and legal order. Law philosophy considers the human being as being the centre of lawmakers' concerns. This central position given to the human being represents one of the basic resources of law, as an art of good and equity. Starting from these considerations, the paper captures the importance of the functioning of Truth and Reconciliation Commissions during transitional periods, as an instrument that paves the path toward a new legal order founded on justice, truth, equity, the victims' right to have their suffering recognised, to be rehabilitated, and to benefit from reparations.

2. Legal Order

Any human community founds its existence on a set of judicial and social norms through which they regulate the behaviour of their members. Thus, in any society, a special place is first and foremost held by a system of judicial norms, which have as a central function the regulation of social behaviours and relations, with the purpose of ensuring social order. This ensemble of legal rules, created in a system that governs the society at a certain point, is defined as being *judicial order.*[4] „The judicial norm is the basic cell of the law, of the elementary judicial system." (my translation)[5] The set of judicial norms that form judicial order is articulated around the value of justice both at the individual and societal levels, having as a purpose ensuring a coherent framework for human rights to be applied, a framework in which individual liberty is respected without altering the liberty of other individuals.

How is *judicial order* understood and applied at the individual and community levels, what mechanisms are applied to put into practice this ensemble of judicial norms? Is the internalization of the set of judicial norms and relations that stem from these a natural process or are coercion mechanisms needed to penalise or, respectively, reward behaviour? In fact, in regards to individuals respecting the norms, Kelson wonders in turn if the obligation manifested by individuals is a result of will and consent or is made without their will and consent?[6]

Judicial norms, as well as the judicial relations they determine, *regulate* social relations and are, in turn, according to societal changes over time, influenced by the latter. Kelson emphasised that:

„The concept of norm signifies that a certain thing must exist or take place ... that a person needs to behave in a certain manner ... A norm that is not applied ... meaning a norm that does not benefit from minimum efficiency, is not recognised as an objectively valid judicial norm." (my translation) [7]

Moreover: „… if a norm is authentically conceived, is also presupposes the possibility of a con-conforming behaviour. Only when there is a nonconforming behaviour toward the judicial norm, which means that behaviour

[3] United Nations, Economic and Social Council, Question of the impunity of perpetrators of human rights violations (civil and political), *Revised final report prepared by Mr. Joinet* pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev. 1, available at *https://digitallibrary.un.org/record/245520?ln=en*, consulted March 2023.

[4] R.M. Beșteliu, *Drept internațional. Introducere în dreptul internațional public*, Al Beck Publishing House, Bucharest, 2003, p. 2.

[5] N. Popa, *Teoria generală a dreptului*, 6th ed., C.H. Beck Publishing House, Bucharest, 2020, p. 138.

[6] H. Kelsen, *Théorie pure du droit*, translated in French by Charles Eisenman, Paris: Brylant LGDJ, 1999, p. 275.

[7] *Idem*, p. 19.

that contradicts the prescription of norm needs to exist for the latter to be justified as a judicial norm (my translation)"[8].

Legal order is thus a result of the manner in which judicial order, defined as the ensemble of norms and judicial relations stipulated by the legal system, is reflected in the social relations at the individual, inter-systemic, inter-institutional and societal levels. Legal order represents the basic condition for ensuring social order, a vaster, integrating concept, without which individual rights cannot be exercised and institutions cannot be functional. „Legal order is the nucleus of social life, the guarantee of fulfilling essential rights of individuals and of the correct functioning of institutions." (my translation)[9]

The Constitution, as a fundamental judicial norm, regulates both the responsibilities of the state's bodies starting from the basic principle of separating the legislative, executive and judicial powers, and the relations between public authorities and citizens.[10] Constitutional order is the source for judicial norms and laws issues in accordance with the constitution, on the basis of which legal order is founded. Although it has the constitutional order as a principle, legal order is more comprehensive than the former.

Through which mechanisms and institutions is legal order ensured? Institutionalised coercion represents the path through which societal order, organization and security is ensured, while the former has as a foundation a system of specific and depersonalised instruments called norms. Moreover, as Nicolae Popa emphasised: „… the established norms need to find a minimum framework for *legitimacy* in order to be the condition for the possible existence of a community. The law is the principle of direction, social cohesion, it ensures society its trait as a finite corpus, of coherence since *before becoming a normative reality, law is a state of mind*". (my translation) [11]

Between *judicial order* and *legal order* there is a certain relation of determination that can be noticed, so that, the former represents the normative basis for the latter which presupposes the activation of the mechanisms that ensure order and coercion.

Fuller[12] mentions that: „… in order to regulate behaviours, the law must fulfil a set of conditions: to be a public rule known to its recipients, to be comprehensible, non-contradictory, permanent and the conditions for it to be respected need to exist." (my translation)

If we admit that the rule of law is an instrument meant to protect individuals' liberties, normative functions will be entrusted with different powers. To this end, Montesquieu[13] underlined the following: „…if in the same person or the same body of magistracy, the legislative power is reunited with the executive power there will be no liberty ... there is no liberty if the power to judge is not separated from the legislative and executive ones. If the power to judge was combined with the legislative power, the criteria regarding citizens' life and liberty would be arbitrary since the legislator would be judge. If the power to judge was combined with the executive power, the conditions for the judge to become oppressor would arise".[14] (my translation)

The rule of law imposes the existence of certain institutional mechanisms through which the possibility to control the hierarchy of norms and the sanctioning of rule violations would be created. The rule of law if foremost *a judicial concept and has a normative* and *institutional format*. The judicial perspective offers a *formal approach* to the rule of law. Beyond this formal perspective, its *substance* is found when its utility within a society is questioned. Thus, the rule of law represents *an instrument for the fulfilment of certain values* without which individuals do not have the freedom to act and consolidate their membership to a society. Positive liberty, in the sense of collective autonomy, represents the possibility for a community to decide on its future.[15] It designates the possibility to directly or indirectly participate in the determination of the norms for common living. The rule of law and democracy maintain consolidation relations but also ones of potential competition.[16]

First of all, the connection between the *rule of law as a governing instrument* (law is a governing instrument, a guide for it) and the *rule of law that presupposes that every social actor be protected by the legal*

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[8] N. Popa, Gh. Dănișor, I. Dogaru, D.C. Dănișor, *Filosofia dreptului,* C.H. Beck Publishing House, Bucharest, 2010, p. 364.

[9] N. Popa, *Teoria generală a dreptului, op. cit.*, pp. 138-139.

[10] See also E.E. Ștefan, „Constituție ca izvor al dreptului", in *Drept administrativ Partea I, Curs universitar,* Universul Juridic Publishing House, Bucharest, 2019, pp. 41-42.

[11] N. Popa, *Teoria generală a dreptului, op. cit.*, pp. 36 and 49.

[12] L.L. Fuller, *The Morality of Law*, New Haven: Yale University Press, 1969, p. 201.

[13] Montesquieu, *Œuvres complètes*, tome II, Paris: Bibliothèque de la Pléiade, 1958, p. 397.

[14] *Idem*, p. 395.

[15] D. Godefridi, *État de droit, liberté et démocratie*, in Politique et Sociétés, 2004, 23, (1):143-169.

[16] *Ibidem*.

system within a society cannot be omitted. The constitutional limits of power (a central element of democracy) can be fulfilled only by using the rules of law. *Second of all*, at a social level, the rules of law presuppose a solid constitution, an efficient electoral system, consensus regarding gender equality, laws for the protection of minorities and other vulnerable groups, and a strong civil society. From this perspective, the rules of law supported by an independent justice system could offer a guarantee that the set of rights and civil and political liberties can be respected. Following this logic, governing while paying attention to the interests and needs of the majority is in direct connection with the functioning of institutions and their capacity to act in the interest of citizens. As stated by the UN general secretary: „…the rule of law is the principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."[17]

3. Truth and Reconciliation Commissions

A standard definition of Truth and Reconciliation Commissions is that offered by Priscilla Hayner.

„A Truth and Reconciliation Commission focuses its activity on past events, investigates the models of violence/abuses against human rights that took place during a certain period of time, directly and comprehensibly targets the affected population, based on information about their experience, functions for a limited period of time, is officially recognised and authorised to function by the states in question, has as a final result the elaboration of a report which presents the results of its activity but also a series of recommendations for reforms."[18] (my translation)

Another series of similar definitions, though not as comprehensible, followed the one offered by Hayner. Tietel[19] considers that a Truth and Reconciliation Commission is an official body, generally created by a national government to investigate, document and report on the abuses on human rights in a certain country, in a certain period of time. In Bronkhorst's perspective,[20] the Truth and Reconciliation Commission is a temporary body, founded by an official authority (president, parliament)[21] to investigate grave violations on human rights committed during a certain period in the past, in order to publish a public report, which includes reviews and recommendations with the purpose of consolidating justice and reconciliation. For Freeman,[22] the Truth and Reconciliation Commission is an ad-hoc, autonomous and victim-centred investigative commission, founded and authorised by a state to investigate and report the main causes and consequences of violence and repressions from the relatively recent past, in order to formulate recommendations, rectify and prevent similar situations.

They are called *truth* commissions because *the right to the truth*, in its individual and collective dimensions, has represented a basis in their creation. For instance,[23] in practice, there are situations when the right to the truth is cited in their formation act, as a legal basis for the creation of the Commissions. Moreover, they are called this because they are constituted similar to an organised framework that invited the victims but also the aggressors to present the truth about the causes, repercussions, acts, sufferings, and aggressions committed.

The right to the truth is inalienable, autonomous, underogating, not subjected to limitations.[24] The 66/2005 Resolution of the UN Commission for human rights[25] recognises, in paragraph 1, the importance of respecting and ensuring the right to the truth, with the purpose of contributing to the fight against impunity and to the promotion of human rights. According to principles 2 and 4, from the report by the independent expert Diane Orenthicher,[26] *the right to the truth* refers to the inalienable right of victims and families to know the truth about

[17] UN General Assembly, *„Delivering justice: programme of action to strengthen the rule of law at the national and international levels*", 16.03.2012, A/66/749, para. 2, available at *http://archive.ipu.org/splz-e/unbrief12/sg-report.pdf*, accessed March 2023.

[18] P.B. Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, 2nd ed., Routledge, 2011, p. 1.

[19] R. Teitel, *Human Rights in Transition: Transitional Justice Genealogy*, in Harvard Human Rights Journal, 16(69): 69-94.

[20] D. Bronkhorst, *Truth Commission and Transitional Justice. A Short Guide,* Amnesty International, Dutch Section, Amsterdam, 1995.

[21] Regarding the concept of authority, see also E.E. Ștefan, *Disputed matters on the concept of public authority*, in the Proceedings of *CKS eBook*, 2015, Pro Universitaria Publishing House, Bucharest, 2015, p. 535 *et seq*.

[22] United Nations, Economic and Social Council, Promotion and Protection of Human Rights, *Study on the right to the truth*, Report of the Office of the United Nations High Commissioner for Human Rights, E/CN.4/2006/91, p. 23, available at *https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement*, accessed March 2023.

[23] *Ibidem*.

[24] *Idem*, p. 15.

[25] UN Commission on Human Rights, Human Rights Resolution 2005/66: *Right to the Truth*, E/CN.4/RES/2005/66, available at: *https://www.refworld.org/docid/45377c7d0.html*, accessed March2023.

[26] Report of the independent expert to update the Set of principles to combat impunity, D. Orentlicher, *op. cit.*

human rights violations according to international law, about the circumstances in which the abuses took place, about the fate of those missing or deceased. Principle 2 (from the Chicago Principles on Post-Conflict Justice)[27] mentions that the victim has the right to know the truth regarding the commission of past abuses, the circumstance in which they took place, the fate of those missing or deceased and the identification of those responsible.

The right to the truth also has a collective character, thus being a right of societies, as a whole, to *find out the truth* about past abuses. The Inter-American Court on Human Rights was a pioneer to this end. In the case of *Ellacuria et al. v. El Salvador*[28] it is mentioned in para. 221 that the right to know the truth about human rights violations and the identity of those who committed the acts constitutes an obligation of the states towards victims' families and society, as a whole. In para. 224 it is emphasised that the right to the truth is a collective right, essential for the functioning of a democratic system. For instance, in the case of *The Massacres Of El Mozote and Nearby Places v. El Salvador*,[29] it is mentioned in paragraphs 25, 244 and 270 that the right to *social truth* specific to societies as a whole allows them access to information that is important in order to prevent abuses. In the case of *Contreras et al. v. El Salvador,*[30] the Inter-American Court of Human Rights, on the basis of art. 1(1), 8, 13, 25 that protect the right to the truth, emphasises that the society has the inalienable right to know the truth about past events, about the circumstances and the causes that lead to abuses, to avoid their reoccurrence in the future and to set up a democratic society (para. 170, 173, 210, 212).

The Human Rights Chamber for Bosnia Herzegovina[31] in the *Srebrenica case* mentions (para. 127, 188, 191, 198, 212) that the investigations done by the authorities of the Republika Srpska regarding the Srebrenica massacres must be detailed and coherent, so as to make the events known to the plaintiffs, the family members and to the public at large. According to Principle 3 from the Orentlicher Report, *the right to the collective truth*, in fact offers the state the right to stock evidence regarding the violence committed, to facilitate its knowledge, with the purpose of maintaining the collective memory, to protect against revisionism and the reoccurrence of similar acts.[32] According to Principle 5, the states have the duty to respect the right to the truth and to encourage investigations of the abuses committed in the past, by founding Truth Commissions or other similar instruments.[33]

The surplus of past abuses and violence involves the victims' desire to have access to the truth, to make it known to the public at large and, at the same time, the need for it to be officially recognised. The search for the truth is animated by a vast series of reasons through which it is worth mentioning: moral rehabilitation, recovery of damages, the desire for such atrocities to never be repeated, becoming free from the weight of the past, the desire to get justice. The right to the truth is, according to para. 11, 22, 24 (Principles and application norms regarding rehabilitation), in connection to the right to rehabilitation and reparations,[34] with the right to combat impunity foreshadowed in the basic principles (para. 1, 2, 3 and 4). Public hearings represent a distinctive element of these commissions. The South Africa Commission marked a turning point, since it incentivised public hearings and, what is more, public hearings centred on the victim.[35]

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[27] The International Human Rights Law Institute, *The Chicago Principles on Post-Conflict Justice*, 2008, pp. 37-41, available at *https://law.depaul.edu/about/centers-and-institutes/international-human-rights-law-institute/projects/Documents/chicago_principles.pdf*, consulted March 2023.

[28] Organization of American States, Inter-American Commission on Human Rights, *Ignacio Ellacuria et al. v. El Salvador*, Report nr. 136/99, Case 10.488, available at *https://web.archive.org/web/20210425203049/https://cidh.oas.org/annualrep/99eng/Merits/ElSalvador10.488.htm*, accessed March 2023.

[29] Inter-American Court of Human Rights, Case *The Massacres of El Mozote And Nearby Places v. El Salvador*, Judgment of October 25, 2012 (Merits, reparations and costs), available at *http://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf*, consulted March 2023.

[30] Inter-American Court of Human Rights, Case *Contreras et al. v. El Salvador*, Judgment of August 31, 2011 (Merits, Reparations and Costs), available at *http://www.corteidh.or.cr/docs/casos/articulos/seriec_232_ing.pdf*, consulted March 2023.

[31] Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility And Merits (delivered on 07.03.2003), *The Srebrenica Cases* (49 applications against Republika Srpska), available at *http://hrc.ustavnisud.ba/ENGLISH/DEFAULT.HTM*, consulted March 2023.

[32] *Report of the independent expert to update the Set of principles to combat impunity,* D. Orentlicher, *op. cit.*

[33] *Ibidem.*

[34] UN, General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, available at *https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation*, consulted March 2023.

[35] M. Freeman, P. Hayner, *Truth-Telling*, in David Bloomfield, Teresa Barnes & Luc Huyse (eds.) 2003, *Reconciliation After Violent Conflict: A Handbook*, International Institute for Democracy and Electoral Assistance, available at *https://www.idea.int/sites/default/files/publications/reconciliation-after-violent-conflict-handbook.pdf*, consulted March 2023.

Beside the truth term, in the name of the Commissions, there is also that of *reconciliation*, since Truth and Reconciliation Commissions focus on the victims' discourse in order to make forgiveness possible. In this paper there is no promotion of an idyllic image of the role that Truth and Reconciliation Commissions can have. In the specialised literature there is also this perspective that Commissions can have magical effects such as the forgiveness practiced between abuser and victims, the healing of societies, etc.[36]

The process of forgiveness is private, individual, so states cannot offer forgiveness in the victims' name. In practice, there are situations when those who committed abuses not only do not ask for the victims' forgiveness, but also reclaim the acts and consider them justified. However, the states' efforts to empower Commissions to function represent a deliberately official act that translates the intention of not perpetuating past abusive practices, of recognising them and of proposing measures so that human rights violations would not be repeated. All of these intentions and actions fall under the general efforts to obtain reconciliation.

A Truth and Reconciliation Commission has, however, as stated by Mattarollo, the role to self-evaluate and self-investigate, so that it is created to mark a state's/society's attempt to *repair and regenerate itself*.[37] The resolutions of the UN Security Council and General Assembly[38] pointed out that establishing the truth about crimes, genocide, human rights violations is part of the reconciliation process. *Reconciliation*, in practice, can manifest under various forms: the official recognition of the traumatic past by new governments, by those who committed the human rights violations, the adoption of a new constitution that guarantees fundamental rights and liberties, free and transparent elections according to international standards, the freeing of political prisoners etc.

4.Truth and Reconciliation Commissions and Legal Order

Without justice, societies cannot make the transition from generalised abuses to the respect for human rights, from illegalities to a new legal order. As previously mentioned, societies made vulnerable as a result of abuses and repressions impose, beside traditional justice, another type of justice during the transitional periods, namely transitional justice. Transitional justice is not similar to a wand that does miracles but can be a useful instrument in a comprehensible and responsible approach to recurrent cycles of violence, impunity, corruption, and generalised abuses lived by a society in its past.

There could be a tendency to confuse traditional justice (penal trials) with the transitional one. It could be believed that the two types of justice overlap. In practice however this is not valid if the distribution of tasks is clear.[39] To this end, Claude Jorda's, the former president of the International Penal Court, position is illuminating. He argues, in one of his interventions at The Hague in 2001, in favour of founding a Truth and Reconciliation Commission in Bosnia Herzegovina. Jorda mentions that the actions of such a commission could *complement* and even *consolidate* the actions of the International Penal Court in its mission to reach reconciliation.[40]

Truth and Reconciliation Commissions could be, in Jorda's view, a framework where the *subordinate-executers* who resorted to reprehensible acts could be audited and could confess to the abuses committed, which would mean the recognition of the victims' suffering; a framework where, on the basis of victims' testimonies, Truth and Reconciliation Commissions propose reparations for the losses suffered; a framework where the pattern of past violent acts, historical, political, sociological, and economic causes could be analysed in order to prevent similar situations from repeating; a framework of dialogue, collective debates that generate information for the configuration of a conflict memory.[41]

In what follows I will argue for the manner in which the principles involved in the functioning of Truth and Reconciliation Commissions, their purpose and activities represent relevant instruments in the configuration of the legal order whose main purpose is, on the one hand, to accomplish essential rights of individuals and, on the other hand, to accomplish the correct functioning of institutions.

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[36] M. Freeman, *Truth Commissions and Procedural Fairness*, Cambridge: Cambridge University Press, 2006, p. 11.

[37] R. Matarrollo, *Truth Commissions*, in Cherif Bassiouni (ed), *PostConflict Justice*, (Leiden: Brill- Nijhoff, Netherlands, 2002), 297-8.

[38] UN, Security Council: Resolution S/RES/1468 (2003); Resolution S/RES/1470 (2003). General Assembly: Resolution A/RES/57/105 (2003); Resolution A/RES/57/161(2003).

[39] See also B.E. Radu, *Judicial advances in combating systematic and generalised abuses on human rights*, Proceedings of *CKS eBook*, „Nicolae Titulescu" University Publishing House, Bucharest, 2022, pp. 363-372.

[40] *Le Tribunal Pénal International et la Commission vérité et conciliation en Bosnie-Herzégovine*, Communiqué de presse, available at *http://www.icty.org/fr/press/le-tribunal-pénal-international-et-la-commission-vérité-et-conciliation-en-bosnie-herzégovine*, consulted March 2023.

[41] B.E. Radu, *Judicial advances in combating systematic and generalised abuses, op. cit.*

First of all, Truth and Reconciliation Commissions carry out investigations on those responsible of the abuses committed in the old regime, thus contributing to the recognition of the sufferings. The existence of the Commissions justifies the transitional phase, meaning the *wider* concept *of justice*, motivated by the exigency of *searching for the truth*, of the need to have the sufferings known and recognised. They focus on the victims' discourse, on their personal experiences, ensuring their right to human dignity, the right to integrity, and the right to make the sufferings they underwent known.

Moreover, the Truth and Reconciliation Commissions do not only translate the effort to discover the *individual truth* – what happened in specific, individual cases – but also the *general truth*, in other words the truth about the practices and methodologies used at the societal level that lead to human rights violations, the political, social, and cultural context that favoured the perpetuation and generalisation of abuses. This recognition is essential in configuring the new legal order, on other fundamentals, which are not to generate the same practices of systematised violence and abuses. Elie Wiesel's famous saying *Never again* has a strong symbolic value since it draws attention on the necessity for generalised and systematised abuses to not be repeated, as they produce unimaginable damages both individually and collectively. However, *Never again* can be materialised only by approaching the truth about the abuses committed and the practices they generated with accountability and by taking responsibility. Moreover, the official recognition of the truth about human rights violations makes the state accept the political and moral responsibility that results from this truth.[42] In other words, the state is invited to take on the duty to repair the prejudices, the victims' losses as well as the responsibility to prevent such actions from repeating.

Furthermore, in connection to those previous mentioned, another argument in favour of the present endeavour consists in the fact that Truth and Reconciliation Commissions intend to prevent and stop the abuses from the past from happening again. In many countries that have been faced with abuses and conflicts, they have proved to be recurrent, or it has been concluded that there is the risk of recurrence. The percentages vary between 57% and 90%.[43] By preventing similar abuses and practices, the Commissions propose respecting individuals' right to safety and security. At the societal level, preventing mass abuses represents an essential condition for societal stability and the state's permanence, for its social and cultural reproduction, indispensable to the new legal order.

The Truth and Reconciliation Commissions propose reparation packages for the victims to rehabilitate their judicial and social statuses. At the individual level, the right to rehabilitation, to returning to the condition before the abuse is respected; at the collective level, the reparation packages translate the state's efforts to promote in praxis the values of equity and justice, essential for the new legal order.

Another argument regarding the role of Truth and Reconciliation Commission in the configuration of the new legal order is related to *the right to know* that the former promote. At the individual level, *the right to know* can lead to a possible forgiveness, in other words, to the reconciliation manifested under various forms: discussions, dialogue during negotiations, etc. At the societal, state level reconciliation can manifest through the adoption of a new constitution that guarantees fundamental rights and liberties, free and transparent elections in accordance with international standards, the freeing political prisoners, etc.

5. Conclusions

The present study has emphasised the connection between legal order and the functioning principles of Truth and Reconciliation Commissions, as a useful instrument in the *reparation* and *regeneration* of a society in whose past there were generalised and systematic human rights violations. In other words, the idea that transpires is the one according to which a society fragmented by cleavages and repressive practices cannot be constructed on solid bases unless it decides to honestly and responsibly confront the repressive past and the generalised violence to which a part of its population was subjected. The repressive practices from a society's past were possible because violence generating models were activated; they were possible because institutions put into practice mass oppressions on the victims. All of these practices are specific to authoritarian and totalitarian regimes, where the legal order represents, first and foremost, an instrument adapted at the discretion of ruling elites. However, the legal order represents, according to the authors presented, a source of

[42] Regarding the concept of responsibility, see also E.E. Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ,* Pro Universitaria Publishing House, Bucharest 2013, pp. 11-16.

[43] ICTJ, *About us*, available at *https://www.ictj.org/about*, consulted March 2023.

order and balance, of security and equity, a common good of a society as well as of every individual in part, a fundamental of democratic societies.

Legal order animates judicial order, on the principles and in the purpose of the principles of the individual and social good and equity. In the entire study the holistic and comprehensible perspective of the philosophy of law promoted by Professor Nicolae Popa transpires. The reconstruction of a society on the foundation of a rule of law can only be understood in the perspective proposed by professor Nicolae Popa, where the historic, social, and political elements intertwine and model the judicial element. In fact, the connection between legal order and the functioning principles of the Truth and Reconciliation Commissions cannot be understood except from this comprehensible and interdisciplinary perspective.

Just as the study advances, present societies have at their disposable, at this time, mechanisms of transitional justice such as Truth and Reconciliation Commissions that focus all the existing resources during transitional periods for the recognition of the truth both at the individual and collective levels. The official recognition of the truth brings about the consolidation of a solid basis in the reconstruction of societies and legal order. Without this recognition, the process of rehabilitation and of awarding reparations to the victims is annulled and, as a result, the social reproduction of cleavages and oppressive practices. In this case, the new legal order can no longer be called *new*, but becomes a continuation, under other facets, of the old order, founded on the old practices: abuses, insecurity, oppression, cleavages between victims and abusers and, above all, a profoundly generalised sentiment of injustice at the individual and collective levels.

However, the study has emphasised precisely the avoidance of this reproduction and the necessity of consolidating a new legal order starting from a real respect for individual rights: the victims' and other citizens' right to the truth, the victims' right to have their sufferings recognised, their right to rehabilitation and reparations, etc. Only thus, in this filigree between the judicial, the social, the political and the historic, can individual rights become the centre of the lawmakers' preoccupations as well as the substance, the foundation of legal order. Only thus, does law become the art of good and equity.

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