THE POTENTIAL AND LIMITATIONS OF TRUTH AND RECONCILIATION COMMISSIONS IN GENERATING JUDICIAL AND NON-JUDICIAL EFFECTS. THE PRESIDENTIAL COMMISSION FOR THE ANALYSIS OF THE COMMUNIST DICTATORSHIP IN ROMANIA.

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Abstract

The transition periods that succeed totalitarian regimes are characterized by the efforts of new governments to recognize the violations of human rights that were committed in the past, to implement legitimate mechanisms to clarify the causes but also the consequences of the violation of human rights by the previous regimes, both at the individual and community level. The truth commissions represent one of these mechanisms, concentrating on the testimonies of the victims and on the recognition of their suffering. Depending on the case, the recommendations of the truth commissions have the role of generating judicial and non-judicial effects, of contributing and completing the bringing into effect of the penal justice, of facilitating the processes of restoration, of preventing the re-iteration of new abuses.

The present paper proposes to analyse the limitations and the transformative potential of the recommendations included in the report done by the Presidential Commission for the analysis of the communist dictatorship in Romania. We will analyse whether the information contained in this report has been useful in the judicial procedures (prosecutorial indictment and judges' motivation) which resulted in the conviction of Ioan Ficior and Alexandru Vişinescu, but also on other two civil sentences. The research approach imposes the use of a content analysis of the official and public documents, a comparative analysis and a historic analysis.

Keywords: *Truth and Reconciliation Commissions, Lustration Law, Presidential Commission for the analysis of the communist dictatorship in Romania, Ioan Ficior, Alexandru Vişinescu.*

1. Introduction

The Truth and Reconciliation Commissions represent the first complex process through which different segments of the population reunite to elaborate policies that are useful to reforms and new democratic constructs within a society. The activity of the Commissions exercises influences upon victims, but also on the community in general, upon the penal and civil trial cases, but also on non-judicial mechanisms. The central idea of the paper is to go beyond the description of the attributes of the Commissions and to capture how the activity of these Commissions can be useful in judicial processes. In the first part, we will argue for the necessity of these Commissions to exist, we will define the concept of a Truth and Reconciliation Commission and we will comment on its attributes. What we tried to do through the types of Commissions presented as examples (from Argentina and South Africa) was to underline the theoretical model of the paper. In other words, we will follow how the information contained in the report elaborated by the Commissions can supply evidence or can offer historic details that are useful in the penal and civil processes from transition periods (judicial effects) and how they can determine non-judicial effects as well (the feeling of justice, moral rehabilitation, the recognition of the sufferings of victims). In the second part of the paper we will analyse the impact of the activity and the report of the Presidential commission for the analysis of the communist dictatorship in Romania on the penal trials against Ioan Ficior and Alexandru Vișinescu, but also on other two civil sentences elaborated in the past years.

2. Content

2.1. Why are restoration devices needed during the transition periods that succeed abusive regimes?

The societies that have been marked by protracted and generalised violence, by abuses and violations of human rights directed towards their own citizens are often socially fragmented and unprepared to function under new governing regimes. The crossing from one model of societal stability to another model of stability is done during a period of time named political, judicial and economic transition. During this entire transition process, what is taken into account is the change at the level of the macrostructure (the crossing from a totalitarian/authoritarian government to a democratic government, from a state of conflict, violence to one of peace), the changes at the level of the medial structure (new institutions, the outlining of a democratic culture based on independence and the good collaboration between the three state powers, the judicial, executive and legislative power) and the change at the

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microstructure (citizens, and their support to legitimate the new forms of government).

This reconstructive stage of the new social and judicial order can only be achieved through the support of the citizens, by regaining their trust in the new institutions of government. However, a significant number of citizens have suffered abuses, and have been oppressed by the old regime. In many cases, their abusers are free or, what's more, they are in leadership positions, in the organisational structures that are responsible for the construction of new societies. At this point, divisions within the society interfere, citizens who suffered abuses in the old regime manifesting mistrust and a lack of will in supporting the new reforms. The latter wish for their suffering to be recognised, for their abusers to be identified and punished for crimes and abuses committed, they wish for the truth to be made public so as to distinguish between abusers and the abused, between criminals and victims in the new social and judicial order. Despite the fact that *that quest is dangerous, complex and often involves protracted advocacy by victims already marginalized by their societies.., those who demand an accounting for the past are increasingly prevailing*[1].

On the other hand, the states have the obligation to propose concrete measures to rectify the prejudice suffered by the victims or their descendants. These obligations are provided by relevant documents such as the Universal Declaration of Human Rights (Article 8), the International Covenant on Civil and Political Rights (Article 2), the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (Article 14).

The manner in which societies have chosen to confront the past, to manage the crises associated with periods of transition, to consolidate the citizens' trust in the act of justice and to create the basis for the new social institutions differ from one continent to another, from one country to another. Two such cases will be mentioned, the Cambodian case where the past was politically instrumented[2], and the case of South Africa, which is recognised for the most solid and functional Truth and Reconciliation Commission in the world.

After the fall of Khmer Rouge's regime in 1980, the new government from Cambodia, formed from the affiliates of the old leader, decided not to make the violent past public and to cut the young generations' access to the truth, proposing forgiving without confronting the past. The politics that was chosen was one of forgetfulness and of the fear of speaking about the atrocities previously committed, in spite of the fact that one fifth of the population had been killed by the old regime[3] and despite the recommendations from the UN experts to create a Truth and Reconciliation Commission. A special role was held by the international community which invested both human and financial resources, so that in 2006, 36 years after the fall of Rouge's regime, extraordinary chambers have started functioning in the Cambodian courts (after an accord signed in 2003 between the government and the UN) for the prosecution of those who are guilty of the atrocities committed by the old regime. The international community cannot however be a substitute for the lack of mobility from behalf of the majority of citizens. Without public support, without the support of citizens who are animated by the desire of knowing the truth, the processes of social reconstruction are difficult to carry through.

Over a period of 45 years in South Africa, the National African Congress conducted a politics characterised by treatments that were discriminatory, abusive, and criminal against a coloured majority population and activists who militated for their rights. In 1994, after Nelson Mandela was elected president, a central place in the public space and within groups of professionals was occupied by questions such as: how do we relate to the past?; can those who committed abuses and crimes during Apartheid be forgiven?; if yes, under what conditions?. The answers to such questions imposed the creation of a Truth and Reconciliation Commission. In 1995 the Promotion of National Unity and Reconciliation Act was voted in Parliament, and in 1996 the Commission formed of 17 members chosen through public nominalisation and selection started functioning, under the coordination of Archbishop Desmond Tutu. Being supported by a human and financial resource (300 employees and $1.8 million for the first two and a half years)[4], the Commission had as responsibilities to offer individual amnesties (a particularity of this committee), to cite witnesses, to collect evidence, to start a witness protection programme for those who decided to testify. 2000 out of the 21000 victims who decided to testify have done so publicly, a TV channel being specially created to familiarise the population with the purpose of hearings and with the steps taken by the commission[5]. Out of the 7115 requests for amnesty that were submitted, 4500 were rejected while for the ones that were accepted the Commission decided on amnesty only if the political factor occupied a determining place in the motivation of the crime. In the cases where the persons who submitted a request for individual amnesty had committed severe crimes, the individuals were heard publicly before the members of the Commission, the legal representatives of the victims or before the victims themselves.

There were numerous attempts to slow down the activity of the Commission from the representatives of

[1] Robin Kirk, "Commissioning Truths, Essays on the 30th Anniversary of Nunca Mas", (North Carolina: DHRC and FHIDUD, 2016), pp. 7-8.
[2] Agata Fijalkowski, "Truth and Reconciliation Commissions", in *An introduction to transitional justice*, (New York: Ed. Olivera Simic, Routledge, 2017), p. 101.
[3] Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, (New York: Routledge, 2snd ed 2011), p. 204.
[4] Agata Fijalkowski, "Truth and Reconciliation Commissions", p. 103.
[5] Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, p. 28.

the former government and of former leaders (former presidents P. Botha and F. Klerk, representative Mbeki, etc) and numerous questions about the efficiency of the Commission regarding the complex process of reconciliation in South Africa. *A relevant aspect however for the research approach of the present study is the presence of the complementariness between traditional justice and the Truth and Reconciliation Commissions. The Truth and Reconciliation Commission from South Africa offered evidence in the courts records of those who were guilty of severe crimes, such an example being former president Botha, who was convicted and fined.*

The two examples mentioned above had as a purpose to trace the ends of a vaster web of options. Between choosing not to confront the past and creating a model Truth and Reconciliation Commission, there are other ways as well that have been adopted by new governments during transition periods: lustration, public access to security archives, material and moral compensations for the victims, convictions of abusers, the rehabilitation of victims who had been detained, truth and reconciliation commissions.

Lustration and the access to security archives are more often encountered in Central and Eastern Europe. Lustration is based on the presumption according to which the new regime cannot be legitimate unless the access of former office holders to public positions is forbidden. After numerous difficulties regarding the implementation of such a law, the countries from Central and Eastern Europe have chosen different paths: the Czech Republic adopted a first lustration law in 1991, then renewed it in 1996, and subsequently in 2000 for 5 years; according to the political orientation of the government Hungary had several attempts, namely they voted the lustration law in 1994, in 1996 they restricted its applicability, while in 2000 they returned to the tougher variant of the law; Poland voted the law in 1997 and started applying it in 1998; Romania voted for the law in 2012).

Truth commissions on the other hand are methods that have become familiar after the 80s in Africa (Chad 1990, Nigeria 1999, Sierra Leone 2000, Ghana 2002, Congo 2003, Morocco 2004, Liberia 2006, Kenya 2008, Togo 2009, Ivory Coast 2011), Asia (South Korea 2000 and 2005, Panama 2001, East Timor 2002, Solomon Islands 2008, Thailand 2010) and South America (Argentina 1983, Uruguay 1984 and 2000, Chile 1989 and 2003, El Salvador 1992, Guatemala 1994, Ecuador 1996 and2007, Peru 2001, Paraguay 2003, Honduras 2010).

2.3. What are Truth and Reconciliation Commissions

Truth and Reconciliation Commissions (TRC) enlist in the current that promotes human rights in the 20th century and represent an instrument of transitional justice, a non-judicial instrument through which generalised abuses that have been committed in the recent past of a country are investigated. The International Centre for Transitional Justice (ICTJ) has pointed out around 40 such commissions at the international level starting with the 80s[6].

They are named Truth Commissions since their existence is justified by a wider concept about truth during periods of crisis, where the exceedance of abuses and the violence models from the recent past impose an approach to match. Certainly, the search for the truth finds itself at the centre of the functioning of traditional justice, but it occupies a special position during transition periods. The individuals who suffered want for the truth about their traumatic past to be revealed, a desire that is animated by a vast series of motives amongst which we can mention: moral rehabilitation, recovery of prejudice, the desire for these atrocities to not repeat themselves, liberation from the burden of the past, the desire for justice to be served for them, to participate in the construction of new institutions based on trust and under legitimate conditions.

Another objective of the Commissions is reconciliation, so that at a different level, a more profound one, the right to the truth could lead to a possible forgiveness from behalf of those who were abused. Although the abuser-victim encounter is commonly found as a desideratum in the theoretical models, and it is very rarely applied in practice, reconciliation can manifest itself under different forms: an official recognition of the traumatic past by those who committed violence or by the new governments, the adoption of a new constitution that guarantees fundamental rights and freedoms, free and transparent elections according to international standards, the freeing of political prisoners etc.

Priscilla Hayner systematizes the attributes of the Truth and Reconciliation Commissions within a comprehensive definition: *A truth commission concentrates its activity on events from the past, investigates models of violence that took place over a period of time, directly targets the affected population in a wider sense as well, basing itself on information about its experience, functions over a limited period of time, it is officially recognised and authorised to function by the governments of the states in question, and has as a final result the elaboration of a report which includes the results of the activities but also a series of recommendations for reforms*[7].

A series of clarifications are needed regarding the existence and functioning of Commissions.

A first aspect would be related to the moment in time when these commissions start their activity but also to the period of time that is necessary for them to function. In regards to the moment when the Commission starts functioning, researchers in the field consider that there is a connection of direct

[6] https://www.ictj.org/our-work, accessed in April 2017.
[7] Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, p. 1.

proportionality between the former and the efficiency of the Commission. If a Commission starts to function at a moment that is as close as possible to the installation of the transition, its activity can benefit both from the support of the population whose memory is still connected to the events from the recent past and from political support, from easier access to information in order to establish the people responsibilities for the violence committed[8]. In regards to the period of time in which a commission can function, it is considered that on average it would not be indicated for it to exceed two-three years despite the fact that it has a complex series of responsibilities such as sorting and organising documents, processing the testimonies from the most important cases, elaborating a report with clear recommendations. The logic according to which the Commissions should have a clear deadline that is limited to a short period of time comes from the possibility that their recommendations could be implemented. If the functioning time of the Commission is very long as it was in the case of Uganda 1986 (9 years), there would be the risk for the public and the representatives of the government to lose their interest in its activity.

Another relevant aspect would be connected to the members of the Commission. The Commissions could be exclusively formed from national members, mixed or international. Depending on the case, the international members are associated with the neutrality and efficiency of the Commission's activity while national members are associated with a good knowledge of the complex situation of the transition from the countries in question. Advantages and disadvantages are encountered in both cases. We could recall the case of the Commission from El Salvador where all of the members were foreign. The moment when the Commission recommended in the final report that a meaningful number of members of the military forces should be excluded from the army since they had committed abuses, the members of the Commission received death threats, two of them leaving the country[9].

The members of the Commissions have the responsibility of collecting evidence, analysing files, ensuring the physical, psychological and moral protection of witnesses, elaborating a final report. The professional and moral profile of the members represents an important indicator in the functioning of the Commissions. In spite of the fact that such a Commission is decided by the executive powers of the state, its members must be chosen according to criteria of impartiality, through public selection, and by excluding political criteria. A positive example would be the one of the Commission from Ecuador where a part of the members of the Commission were representatives of non-governmental organizations, a hailed decision since the commissions represent an instrument of civil societies.

The third aspect that we will refer to is connected to the legitimacy of the existence of Commissions. Their creation depends on the society's history and cultural, economic and political particularities. For a Commission to be legitimate and efficient, it would have to be a response in the search for truth and justice from behalf of the society in general and of the victims in particular. An ideal model to follow would presuppose a preliminary consultation with the victims and their families, with the representatives of the civil society.

The last aspect that will be mentioned is related to the activities that the Commissions have the right to carry out: accessing archives; conducting public or private interviews; collecting information from the testimonies from the victims, their families, various witnesses or even from abusers, in certain situations; accessing official documents. Some Commissions also have the authority to send citations, to share the results of their work with the judicial authorities, to make recommendations for those responsible of crimes and violent acts to be legally convicted, to publish the names of those who committed abuses[10].

The first body that fulfilled the attributes of a Commission, even though it was not called a Truth and Reconciliation Commission, was the Commission from Argentina, created under President Raul Alfonsin in 1983. During the 1978-1983 military dictatorship, between 10000 and 30000 people were arrested, tortured or went missing. The Commission was named National Commission on the Disappeared (CONADEP) and functioned for a period of 9 months, its activity being widely disseminated to the public through mass-media. The CONADEP report, edited in 1984 and containing 50000 pages was entitled Nunca Mas (Never Again), was translated in various languages and was based on thorough investigations: documentation regarding the disappearing of 8961 people, 7000 testimonies, 1500 interviews about the approximately 300 torture centres and the methods used by the military dictatorship during 1976-1983.[11]

What is relevant for the present study is the manner in which the information concentrated in the CONADEP report came to be material presented to prosecutors and was used as key evidence in the trials that resulted in the conviction of those who were responsible for the abuses from the past. Despite the periods of pardon and amnesty that followed under the new president Menem, in 2009, 1400 of individuals guilty of crimes were convicted and 68% of them were arrested in 2011.

[8] Agata Fijalkowski, "Truth an Reconciliation Commissions", p. 96.
[9] Idem.
[10] Priscilla B. Hayner, "Truth Commission: a schematic overview", *International Review of the Red Cross*, volume 88, Number 862, (June 2006): pp. 295-296.
[11] Robin Kirk, "Commissioning Truths, Essays on the 30th Anniversary of Nunca Mas", pp. 6-16.

This report represented a first part of what Kathryn Sikkink calls "justice cascade" at both the national and international level, "a basis for the modern human rights movement"[12].

In Central and Eastern Europe the methods of the transitional justice through which the confrontation with the traumatic past was chosen differ from other regions. The countries chose to select and to locally apply either lustration laws, as aforementioned, or access to the security files and less the instrument represented by the Truth and Reconciliation Commissions, there having therefore been only three such commissions created (two in Germany) and one in Romania. The totalitarian regime was based on the control exercised by the political police that instituted terror and submission at a wide level, the state extending its tentacles in the private life of citizens as well. Any attempt at expressing an opinion that was in disagreement with the values of the state party or any act of resistance was severely punished either with acts of physical, psychological or moral violence or with the confinement of those in question. The access to educational and medical services was forbidden to individuals who came from other social mediums than the ones preferred by the regime.

The first Commission from Central and Eastern Europe was also the first German Commission called the Commission of Inquiry for the Assessment and Consequences of the Socialist Unity Party Dictatorship in Germany which functioned between 1992 and 1994. Created by the German Parliament and coordinated by Rainer Eppelman, the Commission did not have the right to cite witnesses, but investigated the 1949-1989 period by using archives, academic papers, testimonies from those involved, public hearings[13]. (Commission of Inquiry for the Assessment and Consequences of the Socialist Unity Party –SED- Dictatorship in Germany, 1992-1994).

In addition to investigating the acts, this Commission had a symbolic mission, namely the investigation of the consequences of the practices used by the old regime. In other words, it was not desired for the behavioural patterns of the oppressors as well as the generalised terror rooted in the old regime to have unwanted consequences on democratic reforms.

The report was finalised in June 1994 and it covered all of the initially proposed objectives: the practices of the Stasi security German forces and of the acting power, the role of the ideology in education and in day-to-day life, the functioning of the church, the relationship between state and church, the justice system, and the opposition[14].

One of the recommendations targeted the creation of another such commission, so that in 1995 the Commission of Inquiry for the Assessment and Elimination of the Consequences of the SED Dictatorship in the German Process of Unification started its activity, being formed from members of Parliament and independent members. Thus, the process of accepting the mistakes of the past was continued and the efforts to incorporate it in the new democratic construct materialized with the intention of not repeating the same mistakes.

2.4. The Presidential Commission for the Analysis of the Communist Dictatorship in Romania

The necessity to recognise the crimes committed during the communist regime, and their illegitimate traumatic character has been supported by a considerable number of intellectuals, who signed a petition that was pushed through in March 2006, before the acting President, T.Băsescu[15]. The Romanian civil society supported in turn this initiative of condemning the abusive acts that were perpetrated during the totalitarian regime which was temporally delimitated from 6 March 1945 to the Revolution of December 1989[16]. The Presidential Commission for the Analysis of the Communist Dictatorship in Romania (PCACDR) was thus founded in April 2006, by presidential decision[17].

The PCACDR was mandated to point out the violations brought to human rights by the totalitarian regime during its almost 50 years of existence, to elaborate a report about the manner in which the institutional practices that lead to "the perpetuation of the communist dictatorship" worked and how the political leaders of the time maintained the institutional structure and resorted to actions that resulted in abuses and crimes.

Throughout the few months it functioned, the members of the Commission concentrated on consulting the archives, and on the studies that had been previously published by them or by other experts. Unlike other Commissions, the PCACDR did not base itself on information obtained either from public or private hearings or from conducting interviews or visiting detention centres[18]. At the end of their activity, the members of the PCACDR elaborated a 666 page report with the following structure: An Introduction entitled "The nature, purpose and effects of the

[12] Idem.

[13] Lavinia Stan, "Truth Commissions in Central and Eastern Europe", Paper prepared for "La controverse dans l'après communisme: (re-) construction du lien social et production politique du vivre-ensemble" conference, (Laval University, 8-9 February 2007), pp.4-7.

[14] "Working Through the History and the Consequences of the SED Dictatorship," Act no. 12/2597, available at https://www.usip.org/publications/1992/05/truth-commission-germany-92, accessed in March 2017.

[15] Cristian Tileagă, *Analiza discursului și reconcilierea cu trecutul recent*, (Oradea: Ed. Primus, 2012), p.46.

[16] Vladimir Tismăneanu, "Sfârsitul tăcerii: Raportul Final si viitorul democratic al Romaniei", available at https://tismaneanu.wordpress.com/2011/12/17/raportul-final-si-viitorul-democratic-al-romaniei/ accessed April 2017.

[17] Administrația Prezidențială, Comunicat de presă, April 5, 2006, available at http://old.presidency.ro/index.php?_RID=det&tb=date_arhiva&id=7859&_PRID=arh accessed April 2017.

[18] Lavinia Stan, "Truth Commissions in Central and Eastern Europe", p. 8.

totalitarian communist regime: Ideology, power and political practice in Romania, 1945-1989", followed by three chapters (The Romanian Communist Party – chapter I, The Repression – chapter II, Society, Economy, Culture – chapter III) and a section of Conclusions entitled "The necessity to analyse, renounce and condemn the communist regime". The report ends with the biographies of the nomenclature[19].

The report was adopted by the president of Romania as an official document and was made public through the website of the Presidential Administration[20] being set to be published as a book in 2007. On 18 December 2006, during a common meeting between the Chamber of Deputies and the Senate from Parliament, the acting President, T. Băsescu, faced up to the conclusions of the final Report of the PCACDR[21]. This moment marked the official condemnation of the "inhumane, constantly, methodically and perseveringly repressive nature of the communist regimes"[22].

In the report it is mentioned that the "communist regime in Romania (1945-1989) was illegitimate and criminal", so that under its management there were "indefeasible crimes against humanity"[23] that were perpetrated. In the same final concluding section, in the subsection entitled "So as to not forget, to condemn, to never repeat", the report contains a set of recommendations centred on: 1. condemnation; 2. memorisation; 3. legislation and justice; 4. investigation and archives; 5. education.

In regards to the recommendations for legislation and justice, there were a series of changes that were made:

1.changes regarding the recommendation of "declaring the crimes and the abuses of the communist regimes – according to existing evidence – as being crimes against humanity and, in consequence, as judicially indefeasible".

On 25 June 2009 the Law no. 286 from the 2009-Penal Code was adopted, published in the Official Gazette, Part I, no. 510 from 24 July 2009, and came into effect on 1 February 2014. Under title XII (Crimes of genocide against humanity and of war) in Chapter I crimes of genocide and those against humanity are incriminated – art. 428 CP (genocide); art. 439 CP (infractions against humanity).

Article 153 par. 2 letter a of the 2009 Penal Code is devoted to the indefeasibility of the infractions against humanity: "*the prescription does not remove the penal responsibility in the case of genocide, crimes against humanity and of war no matter the date when they were committed.*"

2.changes regarding the recommendation of "immediately adopting the Lustration Law".

On 19 May 2010, the Romanian Parliament adopted the Lustration Law regarding the temporary limitation of access to certain positions and public offices for persons who were a part of the power structures and of the repressive apparatus of the communist regime during 6 March 1945- 22 December 1989.

Under art. 146 letter a from the Constitution, the law was submitted to the constitutionality examination and through the Decision no 820 from 7 June 2010, published in the Official Gazette of Romania, Part I, no. 420 from 23 June 2010, the Constitutional Court ascertained that the criticised law was unconstitutional.

The Constitutional Court retained the following arguments of unconstitutionality[24].

In the conception of the criticised law the judicial responsibility and the sanctioning are founded on the holding of a dignity or position in the structures and the repressive apparatus of the former totalitarian communist regime. The judicial responsibility, no matter its nature, is a responsibility that is mainly individual and exists only based on judicial incidents and judicial acts perpetrated by a person, and not on presumptions.

The Lustration Law is excessive in relation to its legitimate purpose, since it does not allow the individualisation of the measure. Even though the criticised law allows resorting to the justice system to justify the interdiction of the right to run for and be elected in positions and dignities, it does not bring under regulation an adequate mechanism with the purpose of establishing the carrying out of some concrete activities directed against fundamental rights and liberties. In other words, the law does not offer adequate guarantees for judicial control over the application of restrictive measures.

Lustration is allowed only in relation to those individuals who effectively took part, together with state organisations, in severe violations of human rights and liberties.

The dispositions of art. 2 from the Lustration Law exceeds the constitutional frame, providing a new interdiction of the right to access public positions, which does not respect art. 53 from the Constitution that refers to restraining the exercising of certain rights or some liberties.

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[19] Vladimir Tismăneanu (ed), Dobrin Dobrincu, Cristian Vasile (coeds), *Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România (Raport Final*, (București: Humanitas, December 2006), pp. 644-663.

[20] Administrația Prezidențială, Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România, valabil la http://old.presidency.ro/?_RID=htm&id=82, accessed March 2017.

[21] Discursul Preşedintelui României, T. Băsescu, prilejuit de Prezentarea Raportului Comisiei Prezidenţiale pentru Analiza Dictaturii Comuniste din România, Bucureşti, december 18 2006, available at http://old.presidency.ro/?_RID=det&tb=date&id=8288&_PRID=ag accessed in April 2017.

[22] Vladimir Tismăneanu (ed), Dobrin Dobrincu, Cristian Vasile (coeds), *Comisia Prezidențială*, p. 19.

[23] Vladimir Tismăneanu (ed), Dobrin Dobrincu, Cristian Vasile (coeds), *Comisia Prezidențială*, p. 628 and p. 637.

[24] Decizia nr. 820 from 7 June 2010, published in the Official Gazette of Romania, Part I, no. 420 from 23 June 2010, http://legislatie.just.ro/Public/DetaliiDocument/119786, accessed in March 2017.

The Lustration Law prejudices the principle of non-retroactivity of the law established in art. 15 par. (2) from the Constitution, according to which "The law rules only for the future, with the exception of the penal or misdemeanour law that is more favourable". The law is applied for acts and actions perpetrated after it came in effect.

The Lustration Law was adopted 21 years after the fall of communism. For this reason, the belated character of the law, without having a decisive role in itself, is considered by the Court as being relevant for the disproportionality of the restrictive measures, even though a legitimate purpose was pursued through them. The proportionality of the measure toward the pursued purpose must be looked at, in each case, through the prism of the evaluation of the political situation of the country, as well as through the prism of other circumstances. In this sense, the Court also invoked the jurisprudence of the European Court of Human Rights regarding the legitimacy of the lustration law in time, (the case of Zdanoka v. Latvia 2004, the case of Partidul Comuniștilor (Nepecerişti) v. Romania 2005).

As a result of the giving of the unconstitutionality decision, the Senate re-examined the Lustration Law and rejected it.

After the debates regarding the Lustration Law, the Chamber of Deputies adopted a regulation with a different judicial content on 28.02.2012.

Through the Decision no. 308 from 28 March 2012, published in the Official Gazette no. 309 from 9.05.2012[25], the Constitutional Court admitted notification forwarded by the President of the High Court of Cassation and Justice of Romania (I.C.C.J.) and ascertained that the Lustration Law regarding the temporary limitation of access to public positions and dignities for individuals who were a part of the power structures and the repressive apparatus of the communist regime during 6 March 1945 – 22 December 1989 is unconstitutional.

The Court ascertained that, by going through the re-examination procedure and adopting the law under the form that is the object of the examination of constitutionality in the cause in question, Parliament did not respect the constitutional provisions contained in art. 147 par. (2) regarding the effects of the decisions given by the Constitutional Court within the *a priori* constitutionality examination, which stipulate the Parliament's obligation to re-examine the dispositions from the law that have been determined as being unconstitutional.

The Court retained that, under the conditions where the Senate and the Chamber of Deputies proceeded to re-examining the Lustration Law regarding the temporary limitation of the access to public positions and dignities for individuals who were a part of the power structures and the repressive apparatus of the communist regime from 6 March 1945 – 22 December 1989 and to adopting the law, even though it was in a modified form, the two Chambers of Parliament did not respect the constitutional provisions that refer to the effects of the decisions made by the Constitutional Court.

In February 2013, the Senate rejected the Lustration Law, while on 6.03.2013, the Judicial Committee from the Chamber of Deputies rejected the Lustration Law as well.

3.changes regarding the recommendation of adopting laws that target reparations.

On 2 June 2009 the Law no. 221/2009 regarding convictions with a political character and the administrative measures that are related to them, and with verdicts given during 6 March 1945 – 22 December 1989 was adopted, then published in the Official Gazette of Romania, Part I, no. 396 from 11 June 2009, and it came into effect on 14.06.2009. This law underwent changes through the OUG no. 32/2010, the Law no. 202/2010, and the Law no. 42/2013.

The Romanian Parliament adopted the Law 226/2011 regarding moral and material restorations for the former active military force that had been abusively removed from the army during 23 August 1944 – 31 December 1961, which was published in the Official Gazette, Part I, no. 854 from 2 December 2011. This law was changed through the Law no. 27/2014, published in the Official Gazette, Part I, no. 201 from 21 March 2014 and through the Law no. 80/2015, published in the Official Gazette, Part I, no. 263 from 20 April 2015.

2.5.The activity of the Presidential Commission in Romania. Judicial and non-judicial effects.

2.5.1. Penal trials

Ficior Ioan

Through the penal sentence no. 58/F, given on 30 March 2016 by the Bucharest Appeal Court, 2nd Penal Division[26], under art. 358 par. 1 and par. 3 with the application of art. 41 par. 2 of the Penal Code from 1968 (with the regulations in effect during the period between the changes brought through the Decree-Law no. 6/1990 and the Law no. 140/1996), with the application of art. 5 from the Penal Code, sentenced the accused Ficior Ioan to 20 years in prison, for the infraction of illiberal treatments. It forbade the accused, under art. 65 of the Penal Code from 1968, the rights provided by art. 64 par. 1 letters a, b, c and e from the same code over a period of 7 years as a complementary sentence, after the execution of the main prison

[25] Decizia nr. 308 from 28 March 2012, published in the Official Gazette, Part I, no. 309 from 9.05.2012, https://www.ccr.ro/files/products/D0308_12.pdf, accessed at April 2017.

[26] Sentința penală nr. 58/F given on 30 March 2016 by the Bucharest Appeal Court, 2nd Penal Division, final through the Penal decision no. 102 given on 29 March 2017 by the High Court of Cassation and Justice-Penal Division, unpublished.

sentence or after the latter is considered as having been executed. Under art. 67 par. 1 and 2 of the Penal Code from 1968 the Court ruled for the military demotion of the accused, as a complementary sentence.

The Court forbade the accused, under art. 71 of the Penal Code from 1968, the rights provided by art. 64 par. 1 letters a, b, c and e from the same code, throughout the execution of the main prison sentence, as an accessory sentence. The Court admitted in part the civil actions formulated by the civil parties M.I., D.M., G.N., B.I.D., M.C.EV, R.I., S.M.M., H.M., it obligated the accused in solidarity with the parties responsible from a civil point of view the Romanian State (through the Ministry of Public Finance), the Ministry of Internal Affairs and the National Administration of Penitentiaries to pay €20. 000 to the civil party B.I.D., €40. 000 to the civil party M.I., €70. 000 to the civil party D.M, €30. 000 to the civil party G.N., €40. 000 to the civil party M.C.EV., €40 000 to the civil party R.I., €40. 000 to the civil party S.M.M., and €30. 000 to the civil party H.M., in its equivalent in lei, at the official exchange rate of the NRB (National Bank of Romania) at the moment of payment, under the title of moral compensations.

Under art. 404 par. 4 letter c the Court maintained as a measure of insurance a seizure on the pension of the accused as it was ruled through the closure from 16 October 2015, to guarantee the payment of compensations and of judicial expenses, up to the sum of €310. 000 (in its equivalent in lei at the official exchange rate of the NRB, at the moment of payment of compensations) and to the sum established under judicial expenses.

In order to give this sentence, the Court retained that, during 1958-1963, the accused, as a lieutenant and commander of the Work colony in Periprava, through repeated material acts, which consisted of actions and inactions that alternated in time, that were committed by violating or disregarding the law or the obligations imposed by the positions he held, as a result of discretionary and abusive exercise of his attributions, having as a warrant an adversity relationship declared not just by the accused but also by those who acted under his guidance, from political reasons, he submitted the collective of detainees, incarcerated in this camp, "the enemies of the people", who were categorically found under his power and at his discretion and that of the regime of the time, to illiberal, inhumane, and degrading treatments, to both physical and psychological torture, to extermination. In its motivation, *in regards to the penal side of the cause*, the Court assessed that:

- the actions of the accused were incriminated under all of the successive penal laws;
- the actions of the accused became indefeasible no matter the applicable law;
- to determine the penal law that is more favourable, what is imposed is not the examination of the incrimination conditions, but the penal treatment that is applicable under each law in part;
- the penal law that is more favourable for the accused from the point of view of the punishing treatment is the Penal Code from 1968, in the regulation existing during the time between the changes brought to the Code through the Decree-Law no. 6/1990 and the Law 140/1996, since during this period the special minimum was identical, but the special maximum was of 20 years, the lowest out of all the maximal punishments provided by law in the successive penal laws.

In regards to the civil side of the cause, the Court ascertained that the civil parties are entitled to receive moral compensations, based on the punishable civil responsibility, some of the parties being considered for direct prejudice, other civil parties being considered for indirect prejudice, since they are collateral victims of the actions from the present cause.

Comments: The research approach of this paper follows the role of the activity of the Presidential Commission and of the report it elaborated in generating judicial and non-judicial effects.

Regarding generating *judicial effects*, we can recall that:

In the indictment act drafted by the representative of the General Prosecutor's Office attached to the High Court of Cassation and Justice of Romania and presented in the reasoning of the Penal sentence, the Final Report of the Presidential Commission for the Analysis of the Communist Dictatorship in Romania is mentioned among the administered evidence. The Court listed also among the administered evidence, the Final Report of the Presidential Commission. The fragment taken from the Report emphasises both the historic context and the details regarding the extermination conditions and practices stipulated in the secret regulations. "The prison, the place where offenders carry out their sentence and are disciplined, became in communist Romania the place where what took place was the elimination, re-education, torture, surveillance, and physical and psychological destruction of all of those who opposed, could have opposed or could not accept the new political-economic-social order disposed by communist authorities. Naturally, by copying the Soviet model of the Gulag, Romanian communist leaders institutionally and procedurally transformed – in terms of the detention regime – the entire inherited penitentiary system, by gradually adding to it the form and substance of an infernal truth...The militarization of the penitentiary, and especially the new secret regulation intended for the prisons where the political detainees were taken, adopted in September 1948, copied from or inspired by the Soviet ones marked the passing toward the slow, physical and psychological extermination of opposers, through a complete isolation from families and society, through starvation and inhumane living conditions, through the lack of medical assistance and through constant surveillance." (p. 231, The Report of the Presidential Commission)

In regards to the role of the Report of the Presidential Commission in generating *non-judicial effects* it can be mentioned the latter are a direct consequence of the final judgement of the torturer Ioan Ficior and, thus, an indirect consequence of the adoption of the report and, implicitly, of the activity of the Presidential Commission. There are two directions that could be mentioned:

- At an *individual level*, for the individuals who represented civil parties in this trial, the moral compensations also signify the recognition of the moral, psychological and physical abuses suffered by the victims or their survivors. The official recognition brings with it the rehabilitation of the victims or of their relatives as well. As it can be observed from the theoretical model, the Commissions have the purpose of investigating and making the truth known but also of reconciling the parties. These moral compensations could be a path toward reconciliation;
- At a *collective level*, the fact that there was an official recognition of the abuses that were committed by the past regime could signify the shaping of a sense of justice, which is extremely important in receiving the vote of confidence from the population in order to legitimise the reforms and the new forms of governing. The sense of justice is the one that prevails, despite the fact that the torturer Ficior received a final verdict many years after the fall of communism, and in spite of the fact that this conviction cannot save the suffering of the victims and cannot neutralise the barbaric practices of the abusers. This conviction contains in itself a symbolic value: the promotion of the truth with the purpose of both rehabilitating the dignity of fellow men and understanding the past in order to not repeat the reproduction of regimes where torturers can use the law to commit crimes and destroy lives.

Vișinescu Alexandru

Through the penal sentence no. 122/F given on 20 April 2015 by the Bucharest Court of Appeal, 1st Penal Division[27], under art. 358 par. 1 and par. 3 corroborated with art. 41 par. 2 from the 1968 Penal Code (with the regulations in effect during the period between the changes brought through the Decree-Law no. 6/1990 and the Law no. 140/1996) with the application of art. 5 from the Penal Code, sentenced the accused Vișinescu Alexandru to the main sentence of 20 years in prison, for committing the infraction of illiberal treatments (infraction against humanity), on an ongoing basis.

Under art. 65 par. 2 and par. 3 from the 1968 Penal Code, the Court forbade the accused, under the title of complementary sentence, to exercise the rights provided by art. 64 par. 1 letter a, letter b, letter c and letter e from the same code, over a period of 5 years after executing his main sentence or after the latter is considered as having been executed. Under art. 67 par. 1 and par. 2 from the 1968 Penal Code, the Court disposed, under the title of complementary sentence, the military demotion of the accused (having the rank of lieutenant -colonel in reserve). Under art. 71 par. 1, par. 2 and par. 3 from the 1968 Penal code, the Court forbade the accused, under the title of accessory sentence, to exercise the rights provided in art. 64 par. 1 letter a, letter b, letter c and letter e from the same code, over the period when the main sentence is being executed.Under art. 397 par. 1 reported to art. 25 par. 1 and to art. 19 par. 1, par. 2 and par. 5 from the Code of penal procedure, the Court admitted, in part, the civil actions formulated in the penal trial by the civil parties I.E., E.N. and C.A.M. and obligated the accused, in solidarity with the parties responsible from a civil point of view the Romanian State (through the Ministry of Public Finance), the Ministry of Internal Affairs and the National Administration of Penitentiaries to pay €100 000 (in its equivalent in lei at the official exchange rate of the National Bank of Romania at the moment of payment) to the civil party I.E., €50 000 (in its equivalent in lei at the official exchange rate of the National Bank of Romania at the moment of payment) to the civil party E.N., and €150 000 (in its equivalent in lei at the official exchange rate of the National Bank of Romania at the moment of payment) to the civil party C.A.-M., under the title of moral compensations.

Under art. 404 par. 4 letter c reported to art. 249 par. 5 thesis I from the Code of penal procedure, maintained the ensuring measures (sequestration and seizure), instituted through the closing from 22 October 2014 for the restoration of the prejudice, on the assets of the accused up to the sum of €300 000 (in its equivalent in lei at the official exchange rate of the National Bank of Romania at the moment of payment of moral compensations toward the civil parties).

In order to give this sentence, the Court retained that, during 1 July 1956 – 13 April 1963, the accused, as commander of the Râmnicu-Sărat Pententiary, according to a unique resolution, through repeated material acts (consisting of actions and inactions), which alternated in time according to the specific nature of each type of such acts, committed by violating or disregarding the law or of the obligations imposed by that quality or as a result of a discretionary exercise, by abusing his position, of his attributions, having as a warrant an adversity relation taken on by him, submitted, due to political reasons, the collective of "counter-revolutionary" detainees imprisoned in the given penitentiary, the other side of the same relation, found under his power, to illiberal treatments (inhumane and degrading), torture (physical and psychological) and extermination.

In its motivation, *in regards to the penal side of the cause*, the Court assessed the following:

- the actions committed by the accused are

[27] Sentința penală nr. 122/F given on 20 April 2015 by the Bucharest Court of Appeal, 1st Penal Division, final through the Sentința penală nr. 51/A given on 10 February 2016 by the High Court of Cassation and Justice -Penal Division, unpublished.

incriminated by all the penal laws that succeeded from the first material acts of execution to present;

- the penal responsibility of the accused for the actions retained in his duty, is not removed through prescription;
- the determination of the more favourable penal law, according art. 5 from the Penal Code, must be done in relation to the criterion of the sanctioning treatment provided in the incrimination norms from the moment when the actions were committed;
- the penal law that is more favourable to the accused, by taking into consideration the criterion of the sanctioning treatment, is the 1968 Penal Code, in the regulation existing in the period between the changes brought by the Decree-Law no. 6/1990 and the Law no. 140/1996, since the incrimination norm contained in art. 358 par. 1 and par. 3 from that code provides, in the case of the prison sentence, the minimal special maximum of 20 years in prison, to which, only optionally, in considering the ongoing form of the infraction, provided by art. 41 par. 2, an increase of up to 5 years, according to art. 42 reported to art. 34 par, 1 letter a and par. 2 can be added.

In regards to the civil side of the cause, the Court ascertained that all the three civil parties are entitled to receive compensations, based on the punishable civil responsibility of the author of the illicit action (the accused) – art. 998 from the 1864 Civil Code and of the legal persons who answer from a civil point of view for the action in question together with the accused (art. 1000 par. 3 from the 1864 Civil Code).

Comments:

Just as in the previous case, following the theoretical model of the paper, we will take the role of the Report of the Presidential Commission in generating judicial and non-judicial effects.

Judicial effects:

If in the previous case we could observe that the information in the report was administered as inscribed evidence, in this case the situation is slightly different.

First of all, on page 186 from the Report it is mentioned that "Vişinescu, the director of the Râmnicu Sărat prison in 1951, personally tortured Ion Mihalache, and he also refused him medical assistance, even more, in the middle of winter, he would order for water to be thrown on him, in his cell.." Even though this information was not administered as inscribed evidence for the accused V.A., it is proof of the practices used by the latter, practices mentioned both in the speech for the prosecution and in the sentence motivation.

The label of torturer attributed to the accused V.A. is found both in the court decisions and in the Report of the Presidential Commission.

Second of all, the High Court of Cassation and Justice of Romania ascertained that the penal responsibility for the imputed actions to the accused V.A. was declared indefeasible by law, before the prescription date provided at the moment when the actions were committed to came to fruition. From that moment on one cannot discuss the prescription institution and its effect in relation to the more favourable penal law. In the part of the report of the Presidential Commission allotted to recommendations regarding legislation and justice, it is mentioned that it would be advisable to declare the crimes and abuses of the communist regime as being crimes against humanity and, as a result, judicially indefeasible. One cannot omit the consonance that exists between this conviction, the recommendations from the Report and the enactment of article 153 par. 2 letter a from the 2009 Penal Code whose content was aforementioned.

Non-judicial effects:

First of all, V.A. represents the first case where a torturer was sentenced for crimes against humanity directed towards the opponents of the communist regime who were imprisoned at the Râmnicu Sărat Penitentiary. In the theoretical model we mentioned the concept of "justice cascade", in other words of the inherent potential of these types of trials to generate other similar trials, with the purpose of instituting again the sense of justice with the community.

Second of all, the notification was done by the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile, a governmental institution, but which is supported by the journalists from the Gândul Daily. This translated the fact that the civil society had an important role. As it was mentioned in the theoretical model, the Truth and Reconciliation represent an instrument that would not have existed in any country if it had not been supported by various organizations and associations of the civil society. This conviction represents a success for the actions undertaken by the civil society, with at least two relevant meanings. Without the civil society, the democratic systems cannot be called democratic, in other words what took place was a step toward consolidating the democratic levers in the Romanian society. The recognition of the suffering has an effect of absolution for both the victims and the civil society, and just as in the first case it can contribute to the activation of networks of trust in social institutions and especially in justice.

2.5.2. Civil Trials

Compensations, Law no. 221/2009

Through the civil sentence no. 192 from 15 June 2010, T.G.-Civil Division admitted in part the civil action formulated by the complainants P.C. and P.E. in contradiction with the defendant, the Ministry of Public Finance, and obligated the defendant to pay 80. 000 RON under the title of moral compensations to the complainants. The Court assessed that under art. 5 from the Law no. 221/2009 the complainants, as wife and

son, are entitled to demand the assignment of civil compensations for the moral prejudice they suffered by convicting the author of these actions. The civil sentence was change by the Craiova Court of Appeal – Civil Division, through the Civil Decision no. 333 from 25 October 2010, in the sense that the defendant was obligated to pay 40. 000 RON in moral compensations to the complainants, while the rest of the dispositions from the attacked Sentence were maintained. Through the Decision no. 6133/2011 from 25.10.2010 of the Craiova Court of Appeal, 1st Civil Division[28] and obligated the defendant to pay €40. 000, under the title of moral compensations to the complainants, in its equivalent in RON at the moment of payment.

In its motivation, the First instance court makes reference to the Final Report of the Presidentialc, a report that offers information about the inhumane conditions from communist prisons and about the physical, psychological and moral abuses to which political detainees were submitted. It is also mentioned that these abuses had as purpose the physical elimination of the detainees before they were to be freed from prison.

This case constitutes another example where the information from the Report of the Presidential Commission are useful for the act of justice.

The judicial effects can be highlighted through the fact that the complainants received, after the application of the restoration law, moral compensations.

Non-judicial effects are a consequence of the fact that the complainants have the feeling that justice has been served and that they benefitted from a moral rehabilitation from the prejudice suffered.

Restoration of prejudice from judicial errors

Through the Civil Sentence no. 1420/C/2011[29] given on 10.10.2011, the Neamț Court House, 1st Civil Division, admitted, in part, the action formulated by the complainant P.A.Ș. in contradiction with the defendant the Romanian State through the Ministry of Public Finance, and as a result ascertained the political character of the administrative measure of dislocation and establishment of mandatory residence, from commune H., District R., in P.N., between 2.03.1949-30.12.1958, of the author of the complaint, P.A.. The head of claim which had compensations as an object was rejected as unfounded.

In order to give this sentence, the Court appreciated that the administrative measure consisting in dislocation and establishment of mandatory residence taken in regards to the author of the complaint has a political character.

In its motivation, the Court in assessing the political character of the dislocations that took place on 2 March 1949 refers, beside other documents, to the Report of the Presidential Commission for the analysis of the communist dictatorship in Romania as well. The judge, based on the information from the report, highlights the conditions and the practices from 1945-1964 as well as the consequence of applying them, respectively the violation of fundamental human rights.

This is important for the research approach of the paper since it represents an example in which the information from the Report of the Presidential Commission contributes to carrying out the act of justice (the report generate *judicial effects*). The acknowledgement of the political character of the administrative measure also determines non-judicial effects such as the recognition of the sufferings and the moral rehabilitation of the complainant citizen.

3. Conclusions

During periods of crisis, justice abounds in cases that distinguish themselves both through their high number and through the particular severity of the actions that were committed. It is not just the traditional justice that experiences a particular challenge during these periods, but also a meaningful part of the citizens who lived in the old regimes, thus existing, from their part, a higher demand to receive justice and to have a functional justice system.

The Truth and Reconciliation Commissions are known as bodies that function over a limited period of time, with the purpose of helping society, in its entirety, to pass on to another stage of its reconstruction, after the fall of previous regimes. In the domain of Transitional Justice, one can notice a respectable number of studies about the history of Truth and Reconciliation Commissions or about the functions that they carry out. However, there are fewer studies that focus on the relationship between Truth and Reconciliation Commissions and traditional justice. The present study fits in the category of the latter, since it highlighted the bridges between Commissions and traditional justice. It highlighted how the activity of the Commissions can complement the classic act of justice just as the archives or the information provided by the Commissions can become evidence or can be useful to offer historic details or information that describes the context in which the abuses and the violation of human rights took place.

The reports that the Truth and Reconciliation Commissions encode the task of seeking out the truth of recent history and propose certain directions to follow in order to make the crossing to new social institutions and to new justice systems. The Presidential Commission for the analysis of the communist dictatorship in Romania (recognised for the limited

[28] Decizia nr. 6133/2011/ from 19 september 2011 given by High Court of Cassation and Justice, published in www.scj.ro from 19 september 2011, accessed April 2017.

[29] Sentința civilă nr. 1420/C/2011 given on 10.10.2011 by the Neamț Court House, 1st Civil Division, irreversible through the Decizia civilă nr. 169/23.01.2012 given by the Bacău Court of Appeal, 1st Civil Division, unpublished.

period of time when it operated – 3 months) elaborated a report that represents an official document of the Romanian State, a document through which the moral, psychological and physical abuses, the crimes and the cruelty acts committed by the communist regime were publicly condemned. Even though the Commission was created 7 years after the fall of the communist regime and a few months before Romania's admission to the EU, its activity marked on the one hand the acceptance of the totalitarian and traumatic past, the recognition of the abuses that were committed, and on the other hand it opened a new stage in the clarification of the historic truth and of the direction that should be followed by the Romanian society.

The micro-research undertaken within this study attained its proposed objectives , namely it highlighted the judicial and non-judicial effects generated by the Raport of the Presidential Commission in the case of two penal trials and some civil sentences. Thus, the inherent connection between the judicial (convictions, decisions) and the non-judicial (moral compensations, the recognition of sufferings), between the human rights perspective (the right to the truth, to rehabilitation, the right to know) and the legal one (trials against those who are guilty, the awarding of restorations) have been pointed out.

The research approach consisted in articulating a theoretical model of analysis (in the first part of the paper) and in its application on the cases that were selected for analysis, in the second part. Certainly, in order to extract solid conclusions, an analysis of more cases would have been called for. This could be considered as the limitation of the present study.

A first comment would be related to the fact that the convictions of the two torturers do not represent more than a fragment from a series of abominable abuses committed by individuals with the same behavioural pattern. There are questions that could be addressed, such as: what do these convictions solve, why so late, why are there only two trials that have final convictions? The paper does not wish to launch itself in such analyses that go beyond the scope of the established research objective. It could however be stated that these convictions represent a step forward in regards to the act of justice, the application of the new legislation, but also a moment with a particular symbolic charge so that, beyond the numbers that usually quantify efficiency, one could return trust to the citizens who wish and have the right to know the truth and to have the feeling that justice is being served.

Another comment would be related to the recommendations of the Report of the Presidential Commission regarding justice and legislation. It could be stated that these recommendations are similar overall with those made by the EU. It could also be stated that the Report of the Presidential Commission is not the one that triggered certain changes in this domain (new laws). As a final note of the conclusion, it is considered that it is not the competitions that are useful in these cases, but the complementations. As long as the direction is that of progress and of consolidating democracy, such complementations can only be beneficial.

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