

New Europe College
Ștefan Odobleja Program
Yearbook 2009-2010



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ISSN 1584-0298

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LEGISLATION AND WAR CRIMINALS' TRIALS IN ROMANIA¹

1. Introduction

World War II is unique in Europe's history due to the huge number of individuals who collaborated with, resisted or were punished for the collaboration with the occupier. Today, in the current stage of research, it is impossible to establish precisely the number of those who were affected by post-war justice. It is estimated that we are dealing with several millions, i.e., 2-3% of the population of the states under occupation or allied with Nazi Germany. The punishments for the culprits were multiple: the people's anger, in the last months of conflict,² death sentences, prison or forced labor, civic degradation, financial penalties, administrative measures (expulsions, surveillance, deprivation of the right to travel or to live in given areas, deprivation of the right to pension). The most "convincing" forms of post-war justice were the trials organized almost everywhere in Europe.³

The issue of the Holocaust and of the adaptation of legislation to punish the war crimes⁴ never had, in Romania, a coherent and comprehensive approach. Until 1989, the academic institutions and the committed historiography, as well as the Romanian jurists willingly occulted the topic. Moreover, the access to documents was, for 50 years, restricted, as only few "privileged" persons of the system could have access to the archives.⁵ Therefore, there is no approach in today's Romania, regarding the war criminals' trials and the role played by the post-war justice,⁶ though some documents from the trials in question have been published over time.⁷ The issue, with small exceptions especially related to the major trials (the trial of the Big Treason,⁸ the journalists' trial⁹ and the tendency of some national-communist historians to try to justify the actions of Antonescu's regime, is still unknown to historians, jurists, political scientists, or sociologists. There are multiple explanations for that: the ideological

monopoly during the communist regime, the long-run inaccessibility of archives, reticence towards the interpretation of events, the lack of adequate conceptual-interpretative strategies, the historians' skepticism as regards the legal implications of the subject, etc.

In the aftermath of the war, the communist leaders hushed up the crimes of the Holocaust. With few exceptions¹⁰ of low intensity and duration, the subject became a taboo for the communist historiography, out of the ideological reasons characterizing the periods covered by the regime of Soviet inspiration.¹¹ The antecedents¹² from the Soviet Union strengthened the conviction of the Romanian communists that the subject had to be kept carefully hidden.¹³ The politically controlled historiography followed an ideological program and those who approached such subjects had to be affiliated to political or military institutions. Moreover, self-victimization and/or the "extra-territorialization of guilt"¹⁴ replaced the reflection on the responsibilities of Holocaust. Over time, the army became the place of strong xenophobic feelings,¹⁵ and the regime supported a pronounced cult of Ion Antonescu.¹⁶

2. Objectives, sources and methodology of research

In the present paper we are going to make a foray in the issue of war crimes, of legislation and of juridical questions that the punishment of these categories of crimes raised in Romania in the aftermath of the war. Our major goal is to analyze the Romanian juridical framework that proposed the punishment of the Holocaust crimes and generated the incrimination of culprits in court. The main objective is the investigation and clarification of both the political and juridical mechanisms that made possible the punishment of the war crimes, as well as of the political context and of the organizational-judicial strategy of the special courts. In the second part, we will focus on the content of the war criminals' trials, insisting upon their function and role.

The research aims at clarifying numerous aspects that have not been documented by now and at answering the following questions: which was the space and time context in which these trials were organized? Whose was the initiative? How was the statute law regarding the war criminals "built"? Which were the evolution and the phases of the political compensation? How did the legislator understand the elaboration of legislation (as a finalized project or a project in progress)? Which were

the sources of inspiration? How did the Romanian political and juridical systems answer to the challenges offered by other special courts in Europe? Who tried whom and which was the “recipe” of investigation in court? Which were the most important pieces of criticism against legislation and courts? Another important part of the paper will deal with the following aspects: the development of the war criminals’ trials, the statistics of trials, their periodization, the technical elements of trials, the juridical support and controversies, the topics of the trials, the accused, the accusation, the defense, the sentences, the disputes on the trials, the tendency to politicize them, the destiny of the convicts, the consequences of the juridical actions.

The ideas presented in this article represent the result of the research made for my doctoral thesis entitled “Transnistria War Criminals’ Trials”. In order to achieve the objectives mentioned above, I resorted to the rich western literature on the topic of the “Nazi trials” in the post-war period,¹⁷ as well as to the existing archives. In the exploration of the subject, I used collections of documents at the United States Holocaust Memorial Museum (Washington DC), but I have also identified important files at CNSAS or in the National Archives (Bucharest and Cluj). Furthermore, the *Official Gazette* of the time, as well as the volumes approaching the period itself were very helpful to us. In our research, we have followed the path trodden by Donald Bloxham in his interpretative models (*Genocide on Trial*)¹⁸ and Michael Marrus (*Holocaust at Nuremberg*),¹⁹ two authors who developed and conceptualized the rigorous analysis of the juridical systems and of the course of war criminals’ trials.

3. Preamble: justice, law and history

Over the last decades, the academic interest for the trials that occurred in the aftermath of World War II has significantly increased. On the one hand, the questioning of the recent past in this direction was due to some minute critical approaches, which underlined the problems of legality. On the other hand, the historical-juridical debate was meant to serve some current challenging events (the foundation of the International Court for Crimes in the former Yugoslavia, of the International Court in Rwanda, etc.), trying to find explanations and at the same time to offer both support and a precedent. Some of the most important questions are particularly interesting: how did the historians interpret the activity of the court and of

the investigators? Which were the consequences of the lack of expertise and of the investigators' inability to find and to condemn the criminals, on the contemporary societies? Which is the relation between historical reality, public perception and the juridical treatment of these trials?²⁰

The limited space and objectives of this study exceed the possible answers to the above questions, but we can offer the reader some considerations referring to the relation between justice, law and history.²¹ The aim of this preamble is to delimitate our historical analysis from the strictly juridical one and to facilitate the comprehension of our scientific approach. "Doing justice" in a very wide sense, clarifying the past, and analyzing facts that occurred in a certain period of time are the historians' duties. Yet, the post-war challenges, the need for expertise in the limits of law have become essential in clarifying the relation between history and justice, especially in the last decades. Explaining history in a juridical manner could be correct from a legal point of view, but in this case the presentation of facts that happened in the past takes an official, abstract form, quite likely to be deprived of meaning for the public opinion. Yet, the different expectations of the community from the two "instances", law (the judge, the prosecutor) and history (the historian) have sometimes consolidated these firm positions. Thus, important historians expressed their refusal to participate in a collaborative process with the legal system, which unavoidably leads to sentences and punishments.²²

In this latter category, of the differences of perspective on the cohabitation between the two disciplines, should be included the French historian Henry Rousso who, when rejecting a request to offer juridical expertise in a trial on the crimes that Maurice Papon²³ committed during war, invoked the "job description", and accused the transformation of history into a court and the adjustment of the due process to the norms of ethics.²⁴ For Rousso, "history changes consistently, as it is rewritten, so it should not be taken into consideration as legal evidence"; he argues, at the same time, in favor of the necessary distinction between memory and history. Memory is a form of propaganda, while history's concern is the truth. The French historian also underlined that trials are "vectors of the memory" that have no other purpose than compensating for a wrong made in the past; the historian should not be an "agitator of collective memory". While history is possible only after a given period of time passes, justice should be done as soon as possible. For Rousso, the fundamental distinction between history and law is their finality, i.e. truth and justice respectively. The trial in a court is limited in time and by legal provisions,

while the historian has the freedom to use a lot of schemes and methods to build his argumentation. The Pappon trial had a huge audience, generated more or less well-informed debates on the recent past. For the leaders in Paris, as well as for the public opinion, the trial was a real landmark, a moment when France carefully looked back on the actions made during the war in the name of the French State. Even if there were quite vocal critics of the trial (Henry Rousso also accused the “militant memory” and the pedagogical function of the justice approach, see above), one could not deny the educative side of such a debate, the symbolic role played in the construction of the public’s sensibility and awareness about the past.²⁵ Some saw in Rousso’s analysis a traditionalist or simplifying theory, while others agreed with the objections to the relation between history and law.²⁶ Yet, as Mark Osiel notices, Professor of Law at the University of Iowa, if law can produce historical distortion, the reverse is also true, history being able to seriously mislead the act of justice.²⁷ Law is an answer of the State institutions to the problems of society and, from this point of view, the influence can be mutual.²⁸ Robert Jackson, chief prosecutor of the International Military Tribunal at Nuremberg, understood the limits of the act of justice from 1945 like that: “We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow”.²⁹

The nature of the historian’s activity has however many elements similar to that of the judge. Both the historian and the legal procedure use the concept of responsibility, but in different ways. The historian, unlike the judge, does not have at his disposal the force of the law, but he has the force of the narrative, endowing the characters with a voice, explaining the choices of the different actors. The intersection of the methods or actions of the historian and of the judge respectively is obvious in many of the phases. Thus, Charles Maier identified some common points of the disciplines:

Moderation, trustworthiness, common sense, sensitivity to context and the limits of human action, life experience, the capacity to address what is particular as well as what is general... these comprise the catalogue of historiographical and jurisprudential virtues alike.³⁰

However, there is also a danger for the synthesis to act toxically, in a unique version, an authoritarianist variant of the past.³¹

Carlo Ginzburg, one of the most famous practitioners of microhistory, compared the judge with the historian, as they are both in search for objective proofs and relevant evidence. But between the two “judges” there are also significant differences in what regards the evaluation and utilization of the *proof*, the most important notion in all this debate. The historian can often borrow some of the judge’s methods, but not the other way around. For instance, if the historian can use the context to recover the past, where the documentary proofs do not exist anymore, the judge is in intrinsic conflict with this method.³² Ginzburg states he mainly agrees with Arnaldo Momigliano’s assertions, though there are differences of perspectives between them:

The historian works on evidence. Rhetoric is not his business. The historian has to assume ordinary commonsense criteria for judging his own evidence. He must not allow himself to be persuaded that his criteria of truth are relative, and that what is true for him today will no longer be true for him tomorrow.³³

Erich Haberer showed that the element of interdependency essentially remains historical expertise, without which one cannot conceive, in our case, an investigation of the Nazi crimes. Moreover, Raoul Hilberg states that while the historian is in what he calls the “service of the truth”, the judge is “in the service of the administration of justice”.³⁴ Thus, the need for a historical analysis was felt when justice manifested its limits in offering a systematic, contextualized approach, reputed specialists being needed to bring justice and history together.³⁵ The most famous institutional example took place at the end of the 1950s, in West Germany, where a special agency for the investigation of the national-socialist regime crimes was set up.³⁶ It carried on a successful activity, managing to launch investigations in at least 13,000 cases by the end of the 1980s.³⁷ For instance, for the most well known trial at Frankfurt, the Auschwitz crimes trial (1963-1965),³⁸ the historians (Hans Buchheim, Martin Broszat and Helmut Krausnick from the Institute of Contemporary History in Munich) offered a 300 page expertise with regards to the history of the camp, which was also published. Subsequently, the historians’ expertise was often required in court.³⁹

A case that occurred in Great Britain one decade ago reopened the debate between history and justice. But this time, as some voices warned, justice was called to clarify history’s problems. The trial, described as “history on trial”,⁴⁰ was entered by David Irving.⁴¹ A controversial

character, author of many writings particularly about World War II, he tried to counteract Deborah Lipstadt,⁴² who had accused him of negationism. For the very beginning, he said the case he brought had in view only the freedom of speech, which had been seriously affected, in his case, by the label he had received from the Jews. Over time, this professional label would have turned him, from a successful author into an author all editors and distributors refuse, with no right to speak in public. In the press, the case was vividly disputed, some journalists asserting that the case questioned the freedom of speech itself, others believing that Irving should be ignored (the trial being nothing else but an important moment in raising the notoriousness of a pseudo-historian, a fraud, who trapped in a legal case top specialists) or that the trial is actually bringing the Holocaust's debate (which is a historical, scientific one) to court. The topic of the case made it hard to digest even for the experienced journalists, so that it was labeled as "absurd", "senseless", "bizarre".⁴³

David Irving lost the case in Great Britain and was forced to pay a fabulous sum to cover the costs of the trial. The experts of the defense showed, with reports of hundreds of pages, the obvious lacks in Irving's volumes: epistemological problems, fantasy in the examination of the historical texts, tendentious arguments, imaginative quotation of sources and obvious distortion, deliberate elimination of proofs.⁴⁴ Yet, the controversies related to the trial, to its significances, as well as to the outcomes of such an action, have continued. David Cesarani, a specialist in the Jewish genocide one cannot overlook, declared that the assertion according to which history was brought in the dock proves a deep misunderstanding of the case, arguing that the factuality of the Holocaust cannot be decided, changed or transformed within a trial. Moreover, Judge Charles Gray stated that the case follows the methodology and historiography used by Irving and not the facts that took place 60 years ago. In spite of all these explanations, no clear separation line could be drawn, the trial approaching both problems.⁴⁵

The brief reflections above played the role of underlining the differences and similarities between history and justice. We also underlined the historian's necessary contribution, the influence that events have, over time, in the elaboration of the legislation, as well as the blunders that can result from distorted interpretation, from the falsification of the past. Moreover, we wished to sustain that our approach aims at participating, through the historian's methods, in the cognizance and understanding of the recent past, by appealing to both legal and historical sources, in a hopefully adequate interpretation.

4. The context and the initiative

Debates on the trying of the war criminals started right during the war, in 1941; the Allies subsequently approached, on different occasions, the problem of the capitulation of Nazi Germany.⁴⁶ In 1943, at Moscow, they even considered a summary execution of the Nazi leaders, arguing that the “luxury of a trial” (Cordell Hull, US Secretary of State) would be too much for their crimes. Yet, in the Declaration of Moscow (30 October, 1943), the issue of the war crimes and of their subsequent punishment decided each state’s right to judge the Nazi criminals according to its own laws. Subsequently, the delegates of the Allies gathered at London to put together an organizational strategy of the International Military Tribunal,⁴⁷ whose main supporter and sponsor was USA.⁴⁸ Here, the delegates of Great Britain, of the United States and of the Soviet Union debated the issue of the war crimes, establishing the main categories of crimes: “crimes against peace”, “war crimes” and “crimes against the humanity”, gathered in article 6 of the declaration. At the same time, the document underlined that the stipulated provisions could not affect the competence and jurisdiction of the local courts already organized or about to be organized.⁴⁹ If the crimes could be localized, the perpetrators’ trying was the job of the national courts. Once the four allied powers signed at London the “Charter of International Military Tribunal” (8 August, 1945), the foundation of the international court in the American area was decided; it started to work on 20 November 1945.⁵⁰ At Nuremberg were accused the “major criminals”, and in the other post-1945 trials (i.e. the great majority) were tried the “small criminals”.⁵¹ We should also mention that the field literature started to problematize the issue of war crimes even before the world war ended.⁵²

In 1943, at Krasnodar, took place the first case against Russian and German citizens, accused for crimes on the Soviet territory, which was the *first trial* regarding crimes committed during World War II. The experience of the Great War and of the show-trials in the ‘30s, made the Soviets also insist upon the Russian collaborators of the Nazis, the danger they represented being even bigger, in the authorities’ opinion, (a fact also reflected in the number of convictions). At the same time, the latest researches emphasized, in spite of the unavoidable evidence regarding the Nazi crimes, the lack of equity of these trials, where the very lax legislation, justice and the issue of collaboration, often used to accuse political enemies (the accusation of “counterrevolutionary activity” was

frequently resorted to) went along with the pedagogic-ideological function, serving domestic and foreign policy interests.⁵³ For the Allies area, the Nuremberg trials (November 1945-October 1946) were not the first actions brought against the war crimes either. Thus, in different points of Europe, the Allies tried to punish these serious crimes the Nazi committed, but the “betrayers” and the “collaborators” were also had in view.⁵⁴ The first trial on the territory controlled by the Allies took place when the war had not yet ended, on 7 April 1945. At Düren (between Köln and Aachen), an American commission condemned a German officer for having killed two American prisoners. In June, another commission investigated and convicted several Germans for having killed a US Army pilot, who had been shot down in August 1944. This way, hundreds of persons were incriminated, in the American and British areas, in front of investigation commissions, before the Nuremberg trial started.⁵⁵

I have made this short introduction to show that Romanian trials from 1945-1946, proceeded by the adaptation of the legal framework, were organized in a very complicated political context, without a precedent and/or a support. Romania, considered a defeated country, joined the allied side almost 9 months before the war ended in Europe, after more than four years spent in the Axis. At that moment, although some trials had taken place, things were not quite cleared-up from the point of view of the juridical formula adopted, of the area of jurisdiction, of the applicable punishments.⁵⁶ The competition between USA and USSR manifested at that time, also on this issue, each of the two states founding in 1942 its own commission⁵⁷ for the investigation of the Nazi crimes; the “major criminals” were going to be tried separately, as had been established at Moscow in 1943, while the details were settled at London, two years later.⁵⁸

In all the states formerly allied with Germany, the armistice compulsory included (for Romania, the Armistice Convention, 12 September, 1944) a stipulation on the war criminals’ trials, in agreement with the Moscow Declaration. In the Romanian case, section 14 from the mentioned Convention stated:

The Government and the Romanian High Command engages itself to collaborate with the Allied (Soviet) High Command in arresting and suing the persons accused of war crimes.⁵⁹

In Hungary, where the Soviets succeeded in occupying Budapest several months after Romania joined the Allies' side, the armistice signed in January 1945 included a similar article, which was also, and probably not accidentally, the 14th.⁶⁰

For the Soviets, it was very important for the Romanian justice to be transformed in due time to serve the purpose of the regime they were going to install here. Yet, despite all the efforts this could not happen in a very short while, so they chose a compromise solution. Some authors said that the rich Soviet experience of those last years⁶¹ made them eventually opt for the special courts. At the same time, it is not less true that the field of the war crimes punishment is distinct of the legal nature of common law offences. The transition solution quickly proved that each national court reached a different definition of collaborationism.⁶² In the post-war period, the distinction between the courts of the states liberated by the Allies and those liberated by the Soviets were insignificant. Here is what the Hungarian historian István Deák has to say about the issue: "The traditional courts were generally too small and too much deprived of credibility to be able to deal with the avalanche of the post-war collaborationist trials. Many judges, if not the great majority, had collaborated with the enemy or at least had faithfully served the defunct and despised regimes, before or during the war."⁶³ But, while the courts in Italy, France, Austria, and so on have gradually become more traditional in their aspect, the courts under Soviet supervision remained consistently revolutionary ones".⁶⁴ It is important to mention that the miscarriages of justice, pointed out in the specialized literature as well, were in all these cases equally numerous.⁶⁵

5. The Romanian legislation on the punishment of war criminals

The legislative measures for denazification represent a distinct chapter in the activity the governments after Antonescu and were enforced since the first days after the *coup d'état*. They aimed at the abrogation of the anti-Jewish statute law, the reintegration of those who had been dismissed for political or racial reasons in the period 1940-1944,⁶⁶ the dismissal of the collaborationists from the public positions, the abolition of organizations with Nazi character, the arresting of the former members of the Legionary Movement,⁶⁷ the arresting and punishing of those who were found guilty of war crimes. Obviously, these measures represented direct consequences of the Armistice Convention, but also concrete achievements of the political

class in Bucharest, which the totalitarian regimes had kept far from the political stage for almost six years.

The Romanian statute law on the war crimes was elaborated starting with August 1944. In four years (1944-1948), it was submitted to several adjustments and redefinitions, according to the evolution of judicial investigations, but also to the international context; in short, five⁶⁸ laws and other eight⁶⁹ legislative modifications. It worked for one decade, as in 1955 it was abrogated, in the context of a mimicked de-Stalinization, through a decree meant to amnesty the convicts for war criminal offences.⁷⁰ Decree 421/1955⁷¹ was also related to the evolutions in Europe. After the Cold War started, a big number of persons were amnestied / released, the relaxation replaced the sustained measures, on almost exclusively political grounds. By this decree, those who were accused of war crimes, crimes against peace and crimes against humanity were pardoned *de jure* or their punishments were reduced, with few exceptions.⁷² Subsequently, these criminal offences were included in the Criminal Code of 1960.⁷³

5.1. The arrest of collaborationists and war criminals

The transition from pro-Nazi dictatorship to a democratic regime could not be achieved but through an ample purging process at the institutional level (army, administration, press, education, cultural institutions, Church). If this action was part of the field of *politics*, the arresting and trying of the people guilty for war crimes was the duty of *justice*, though the distinction was not at all clearly defined.⁷⁴ Moreover, if we accept Otto Kirchheimer's definition, the trials after the war are part of the political justice field.⁷⁵ The vague concept of *collaborationism* was many times applied before the emergence of a legislation, so numerous misunderstandings, illegal actions and a deep suspicion on a significant number of civil servants resulted. Here is what the Romanian minister of Foreign Affairs in the autumn of 1944, Grigore Niculescu-Buzești, stated on the issue of the collaborationism (it is important to say that at that time, arrests were made in the absence of a legislation that would punish collaborationism, even retroactively):

In our country, it is a different situation [compared to France, where the members of the Vichy government were accused of betrayal, A.M. n.]: the problem of the collaboration with the enemy is not posed here. Romania did not have a different legal government during the war. Our problem is the problem of political responsibility and we must frame it in our constitutional regime.⁷⁶

However, as Henry Rousso showed, collaboration involves several forms, according to the occupier's purposes. The French historian included Romania in the category of satellite-states of the Reich, strategically allied against a common enemy, but this explains only partially the war in the East.⁷⁷

Since the first month of the post-Antonescu government, orders were issued to arrest the legionaries and the important members of the German Ethnic Group, though they were regarded as illegal since the very moment of their issuing. Mixed commissions, made up of representatives of the public order institutions and political representatives, and subsequently of magistrates too, started the interrogation and selection of the people confined.⁷⁸ It is important to notice that these commissions, like other projects that had in view this delicate issue, have never excluded the traditional legal system from among the decision-makers. On the contrary, the political leaders (except for the communist ones) tried to maintain, at least apparently and in accordance to the possibilities of a defeated, occupied state, the legality of the arrest and confinement of the persons *sui generis* suspected of collaborationism. The arrest of the supposed war criminals continued in the months to come, with a lower or a higher intensity, with the inherent organizational lacks and the inertia specific to a state that had been the ally of Nazi Germany.⁷⁹ Yet, the legality of the orders was questioned and the identified solution was a peculiar one as well – a special law and clear norms of enforcement⁸⁰, given the retroactive character of the measures of confinement.⁸¹

The arrest of persons beyond a legal framework would have violated, the government officials said, the fundamental rights, as they were stipulated in the Constitution (which had, furthermore, been suspended more than six years before).⁸² The debates in the Government showed that the problem of constitutionality was a very delicate one, which the representatives of all parties were aware of. The defining of the terms used to identify different criminal offences, which had not existed in the Romanian law by then, represented another major issue in the debates of the political leaders.⁸³ During the governments headed by General Constantin Sănătescu (23 August-2 December 1944) lists were made with the former members of the national-legionary and Antonescu governments, in order to make arrests or to start preliminary investigations.⁸⁴ Some of the members of the former cabinets (I. P. Gigurtu, Mihail Manoilescu and Valeriu Pop) required to be set free, as they had been arrested several weeks before, without being sued.⁸⁵ Different lists (some of them written in Russian) requiring the arrest

of the war criminals arrived at the Government from the Allied Commission in Romania. For instance, the Council of Ministers was requested to arrest General Gheorghe Potopeanu, the former minister of the National Economy in 1941, Constantin Z. Vasiliu, the former secretary of state at the Ministry of the Interior⁸⁶ and Major-General Constantin Trestioreanu, involved in the reprisals of Odessa. The arrests were generally operated by the Gendarmerie and the secret service (*Siguranța*) as far as the civilians were concerned, while the military were detained by staff of the Army; measures were also taken against those who were hiding the perpetrators.⁸⁷ After the statute law for the punishment of war criminals appeared, trial under arrest was established. The individuals who were suspected of war crimes were to be imprisoned in the penitentiaries of Pitești, Lugoj, Zalău, Gherla⁸⁸ and subsequently Dumbrăveni.⁸⁹ The legislative incoherence and the postponement of precise regulations led, among others, to successive challenges of the State institutions (Prosecutor's Office, the Capital's Police Prefecture, the Martial Court). These ones disclaimed any competence in the arrest of the war criminals, while the arrested persons were sending numbers of memoirs to the different executive and/or legal authorities, accusing illegal detention, absence of investigations or of warrants.⁹⁰

The subject of the arrest of the former collaborationists and war criminals generated, from the very beginning, disputes between the politically incompatible government partners. In the new context, the Romanian political leaders were forced to cooperate with those who, more than 20 years ago, had made them illegal. Obviously, the members of the Communist Party could not ignore the permanent hunt they had been submitted to, the prison experiences or the status of political sect they had been forced to. Paradoxically, the subject of the Soviet Union,⁹¹ which had separated them for two decades, brought them together. Very soon, the communists used the press to administrate attacks against rival political leaders, transferring the accusations of war crime and collaborationism on those who had been against the USSR policies.⁹² If General Aurel Aldea, the Minister of the Interior at that time, was wondering how the war criminals would be tried (as no legal basis existed), the communist minister Lucrețiu Pătrășcanu spoke about sabotage on some Government members:

We keep them in detention [referring, probably, to Radu Lecca and his collaborators, which were recently arrested, A.M. n.]. We have passed in the Council, last Tuesday, the law on the basis of which we can make

preventive arrests. The Minister of Justice [Aureliu Căpățână, A.M.n.] kept the draft until Saturday, and when I invited him to come to the Council, he didn't. The idea of sabotage shows through all of this action of his.

As for their investigation, Pătrășcanu continued:

These people are arrested either for criminal offences, or for offences against the State. *When it comes to finding a man guilty, the Romanian justice does a great job. Don't worry* (emphasis added, A.M.). I know this from my own experience, and not only the lawyer experience.⁹³

Therefore, the situation of the war criminals' arrest became a controversial one since the first days after August 23, and it remained a consistent and delicate problems for all post-Antonescu governments.⁹⁴ According to General Virgil Stănescu, undersecretary of State for the State Security in the Ministry of the Interior in Cabinet Rădescu, in mid-December 1944, civil and military personalities were arrested without legal forms. Some of the people arrested had been included in the reports of the Council of Ministers, but other people's names could not be found in the Official Gazette, although they were confined.⁹⁵ This observation, that innocent people had been deprived of liberty with no previous investigation, was made even by the pro-communist Prime minister Petru Groza.⁹⁶

In this phase of the research, the total number of the war criminals is unknown. The documents will probably never offer the whole list of perpetrators, especially that the debate on guilt cannot be sustained in the absence of some noteworthy interdisciplinary studies, able to weigh the decisional and executive responsibilities. The confinement of the war criminals was an action mainly achieved in the span 1945-1948, and which involves a big number of approaches from the standpoint of the existing complicities, of the political interferences, of the foreign intervention (particularly the Soviet one). But there were also perpetrators who died during the war, or whom the courts could not arrest. Others were acquitted or have never been tried, out of different reasons, mainly related to the post-war social-political context, or because they had killed the potential eyewitnesses.⁹⁷

5.2. The establishment of Romanian special courts

The legal procedures regarding the punishment of the war crimes proved to be a very controversial one, from the standpoint of both its legality and the observance of procedures. Some ambiguous phrasings appeared, generated by the conflict between the democratic parties and the Romanian Communist Party, but also by the lack of experience and of expertise. For instance, in a meeting of the Council of Ministers in mid-December, 1944, when the war criminals issue was vividly debated and when the domestic and the foreign pressures on the Romanian authorities were about to lead to a communication deadlock,⁹⁸ the person in charge, undersecretary of State General Virgil Stănescu⁹⁹ from the Ministry of the Interior, proved his incapacity to understand and elaborate a definition of the war criminals.

At my arrival, I found a difficult situation. There were civil and military personalities under arrest and who are still arrested, in relation to whom I did not find a legal disposition that could justify their arrest and I found no definition of the notion of war criminal. (...) Sirs, I found nowhere a definition of the war criminals. Then, with my jurisdictional bodies, I tried to draft an ante-project that could serve as a guide for the final law (emphasis added, A.M.).¹⁰⁰

Moreover, his colleagues did not prove to be more experienced, some of them (Petru Groza, for instance, vice-president of the Council of Ministers, at that time) making references to Winston Churchill's or Franklin Delano Roosevelt's discourses, or sustaining that the Romanian definition of war criminals should be in agreement with the one given by the Allies – probably considering the few details made public through the Moscow Declaration.¹⁰¹

This debate proves the major obstacle that the representatives of the Romanian authorities of the time were confronted to. They did not have access to the official documents, like other exile governments (we particularly have in mind here the Polish case) and the only information sources were the press accounts on the approaches the Allies made, at that moment. The absence of an organized framework, the public pressure and the necessity to quickly identify the culprits for the "country's disaster" accompanied the fact that the Government held, for a period, the legislative power as well.¹⁰² Though they followed the press accounts on the situation of the other states,¹⁰³ there was no clear image on the

war crimes punishment process, so the Romanian officials had to resort to innovations, as we will see below.

In the other Central European countries, the authorities decided, in a short while, to establish special courts for the war criminal offences trials. Poland was a special case, from many points of view, as the action of justice had to answer here an urgent need of suing the Nazi criminals and collaborators who had committed offences on the Polish territory. First of all, in this case we should notice that the elaboration of the statute law started since 1944, being one of the first Allies' decrees, and significantly covering the criminal offences defined at London as well. Secondly, recent research has demonstrated that the legal investigations and procedures followed the rigor of Western modern justice. Finally the court was an extraordinary one – the National Supreme Court – trying the major criminals and being, to a great extent, different in terms of organization, from the other criminal courts, whose Stalinization was in progress.¹⁰⁴ In Hungary, since January 1945, a system was established, very close to the Romanian one, including special courts (People's Tribunals) and a higher body for the appeals.¹⁰⁵ The same thing happened in Czechoslovakia (one system for Slovakia, another one for the Czech provinces), where, starting with 1945, courts were established, through presidential decrees, for the actions against criminals, betrayers, accomplices, major collaborators, as well as against the persons accused of "offences against the national honor".¹⁰⁶

Romania also made this step early. On 30 August 1944, the first official debates took place in a meeting of the first post-Antonescu government, about the establishment of an extraordinary court:

The council decides that as regards the establishment of the special Court that is going to try the actions of the former regime, the foundation would be the project drawn up by the Ministry of the Interior, where delegates from all the parties would be sent to conclude the process.¹⁰⁷

The project, which is actually the first Romanian attempt to legalize the punishment of war criminal offences, has never been adopted, but it was preserved and it is an extremely solid proof in rejecting the assertions according to which the paternity of the Romanian normative acts in the field was an exclusively a Soviet one. We have discovered this draft, an unedited document, in the unexplored archives of the Legislative Council, the institution required, at the time, to decide on it. Therefore,

initially an investigation commission was intended, in front of which the individuals guilty for the country's disaster were supposed to appear, but this project would have probably breached many stipulations of the Constitution. The commission – made of 10 members, out of whom one chairman, all appointed by the King on the proposal of the Government, and auxiliary staff – should have worked for six months (with possibility of prolongation) with the board of the Council of Ministers, to maintain, probably, the control upon the investigations. The commission was going to establish the “political and criminal responsibilities of the moral and material authors and accomplices”. We should notice that the project is seldom quite intransigent for that period, including, in fact, many of the elements that we will find later in the framework-law of April 1945: the commission held all the powers of the examining magistrate, it could take notice *ex officio*, the acts could not be attacked, the warrants were not submitted to confirmation.¹⁰⁸

In January 1945, through two normative acts (Laws 50 and 51/1945), the research activity on the war crimes was assigned to two courts, outside the local legal framework: the Special Court for the suing of the “guilty for the country's disaster” (with 4 cabinets of examination) and the Special Tribunal for the suing of “war criminals” (with 3 cabinets); the two courts, which have never operated *de facto*, were merged with the adoption of the Law in April 1945, 15 examining cabinets being established, each headed by a public accuser. Two People's Tribunals were created (following the Soviet model implemented, as we have seen, in other European states as well): one in Bucharest (for the Old Kingdom and for those who perpetrated offences abroad, in May 1945)¹⁰⁹ and another one in Cluj (to try the persons living in Transylvania and Banat, “regardless of the place where they perpetrated the offence”, in July 1945),¹¹⁰ though at least two more (at Iași and Galați) had been planned.¹¹¹ After two years, through the regulations of 1947, the trials were investigated at the Courts of Appeals in Bucharest and Cluj.¹¹² Initially, the term of applicability was 6 months, after the Bulgarian model.¹¹³ Subsequently, by the Law 312 of April 1945, it was prolonged until 1 September 1945, and through successive laws until 31 October 1948, on the request of the Soviet side,¹¹⁴ who had found out serious lacks in the activity of the People's Tribunal. The normative act of 1948 suppressed any term of applicability of the law, being abolished, as we have said above, in 1955.

The law 312/1945 *for the pursuing and punishing of the persons guilty for the country's disaster or for war crimes*, the main statute that

grounded the legislation in this field, adopted in a new political context, with the installation of the first pro-communist government, was drawn up by different specialists in the period September 1944-April 1945; it was inspired from the unadopted project presented above. We must state that the communist government accelerated the suing and condemnation of the defendants. The delay with which the other governments worked, as well as the non-communication of the denazification measures left the feeling that the former officials wished to tergiversate the action.¹¹⁵ Here is what Lucrețiu Pătrășcanu, Romanian minister of Justice, said about the ruling of April 1945:

This is a political law, but not one outside the criminal law framework;

The whole issue is then placed under the censorship of the Minister of Justice. You can clearly see that the Minister of Justice is responsible for these trials. So there is a guarantee, there is a person in charge, it is the minister of justice, who takes care for the law to be enforced;

...we should mention that competence of the People's Tribunal for everything that is politically repressible at this moment. It [the People's Tribunal] is for the epoch we are now living. This epoch also includes the repression of other criminal offences, for which there is no other court...;

The law, in its substance, is a law of political repression – and nothing more – that should satisfy the popular feeling, the Allies, and everything that we believe in now in Romania.¹¹⁶

Therefore, the courts were organized on several subordination levels, the Soviet model of control being insured.¹¹⁷ Pătrășcanu again underlined that “the People's Tribunal created for the punishment of the war criminals will be the example according to which we will transform the country's whole justice system”.¹¹⁸

One of the vital issues is to what extent the Romanian case represents an institutional combination between the military courts and the Extraordinary State Commission in USSR. In 1943 the *Extraordinary State Commission for the reporting and investigation of the atrocities of the German-fascist occupiers and of their accomplices, and of the damages brought to citizens, kolkhozes, public organizations, State enterprises* was created.¹¹⁹ Kiril Feferman from the University of Jerusalem followed the activity of the Soviet commission and the way in which this reflected the

Holocaust against the Jews on the Soviet territory.¹²⁰ The unprofessional manner in which the questionings took place, the field investigations, the quantification of the number of victims often led to erroneous figures on the Holocaust victims in the Soviet area. Furthermore, the Russian researcher Marina Sorokina convincingly showed that the purpose of this soviet body was rather a political and propagandistic one, where the culture of the secret went along with the desire for the product delivered to public opinion rather to serve the interests of the Stalinist regime, and less the legal system and quest the truth. The main objective of the commission was to attentively follow the post-war architecture of Europe and of the Soviet Union, where ideology served Moscow's political interest.¹²¹ The question whether the special court created in Romania was conceived as part of the Soviet experience seems so more legitimate as the grey eminence of the USSR commission was Andrei Vyshinsky. Former general prosecutor of the Republic during the Great Terror, when he staged show-trials,¹²² he was appointed by Stalin to deal with the Romanian affairs,¹²³ being at the same time involved in the activity of the Soviet team at Nuremberg.¹²⁴ In the absence of documentary evidence, this hypothesis remains a plausible work variant, given the context and evolutions in this matter.

5.3. The actors of the People's Tribunals: public accusers

The main actors of the People's Tribunals were not the judges, but the public accusers, who replaced the prosecutors. The power of the public accusers was almost unlimited, as they had many assignments (criminal investigation, suing and organization of the accusation) that exceeded those of an ordinary prosecutor. In USSR, where this model had been imported from, the function of the public accuser was a decisive one, given that the defendant eventually admitted all the accusations, in a public confession, declaring oneself guilty and asking for acquittal.¹²⁵ The public accuser was thus playing the role of the omniscient, self-confident upholder of justice, the representative of the nation, who exculpates and purifies it at the same time, finding the culprits and the betrayers right within it.

Here are several names that the historians, modestly approaching this issue after 1989, found "terrifying" in relation to the activity carried on in the courts: Dumitru Săracu (waiter-cook, former internee in the Tg. Jiu camp for communist activity, where he seems to have held a function too),¹²⁶ Alexandra Sidorovici (engineer), Avram Bunaciu (lawyer, chief

of the public accusers¹²⁷ in the first period of the Court), all of them members of the Communist Party, future characters of the communist nomenclature. Yet, the main actors of the trials that the minister of Justice labeled as “verified men”,¹²⁸ were not at all known at the time, being by far anonymous compared to some of the defendants. The public accusers also benefited by the support of auxiliary staff¹²⁹, they could take notice *ex officio*, they could make arrests, raids, and their acts were irrefutable. Usually, the chief public accuser was the one who notified a public accuser, and after that investigations started. Yet, in the absence of a denunciation, says Alexandra Sidorovici, a former accuser, the identification of the perpetrators could be made by attentively consulting the war documents, which made the activity “particularly delicate for us, the accusers”.¹³⁰

The first public accusers were appointed in February 1945 by a third non-communist government; a total number of about 40 individuals occupied these functions in the People’s Tribunal in the period 1945-1946. Over time, the “inadequate” accusers were replaced by the communists. In some cases, the zeal was not the expected one, other times the dismissals were justified by the guilt of having opposed the investigations and having unjustifiably released part of the accused. For instance, about Ilie Țabrea, the first chairman of the special court, the communists said that he “discussed with the defendants privately, manifesting his ‘repugnance’ to the People’s Tribunal”.¹³¹ Others proved to be ineffective, carrying on other activities, being absent most of the time or being simply incompetent. The communists wanted for these positions trustworthy people “with some training in this field – workers and intellectuals, and who should really work”.¹³²

Far from being content with their activity, the communists harshly criticized the public accusers on the occasion of an evaluation made two years after the inauguration of the special courts. They even proposed for the accusers to be brought to account for numerous deficiencies in the investigation activity. After having discovered a big number of closed cases and acquitted persons, two investigative commissions were created, including officials of the Control Allied Commission and of the Romanian Ministries of the Interior and of Justice. After two months of investigations, the commission concluded that almost 400 cases regarding 600 persons were closed without sufficient data.¹³³

The benches were made of judges appointed by the Minister of Justice from among the professional magistrates, or from the political parties

and organizations that were part of the Government. The head of bench was compulsorily chosen from among magistrates. Among the judges appointed by the first pro-communist government, the name of Alexandru Voitinovici¹³⁴ arrests attention, the son of a Jewish confectioner in Iasi, a modest prosecutor who, due to his relations with the communist leaders, was appointed the chairman of the People's Tribunal in Bucharest. Over time, he held important positions in the communist justice system: general prosecutor and subsequently chairman of the Supreme Court of the republic.¹³⁵ Some of the public accusers were recruited due to the fact that they had defended the communists in the interwar trials or had facilitated different relations for them, while being imprisoned for illegal activities.¹³⁶ Another magistrate was pardoned for having tortured and killed under Antonescu a Jewish student accused of communist actions.¹³⁷ Over the years, the former accusers were rewarded by the new regime, receiving different functions in the communist bureaucracy or being awarded for the participation in the People's Tribunal trials.¹³⁸ But this did not happen with all of them, though their contribution to the trying and condemning of the war criminals was appreciated at that time. Other were marginalized or even investigated¹³⁹ later.

The judges, law experts and especially the public accusers involved in the war criminals' trials (particularly the ones held by the People's Tribunal) were convinced that they participated in a very direct way, in a dual capacity, doing at the same time *justice* and *history*. Their intimate wish, as it shows through the bills of indictment, was to educate the public and at the same time to get involved in the "juridical historiography" (the writing of history from a juridical point of view and the writing of history achieving the legal requirements), using the trials as a forum to demonstrate a pre-established truth.¹⁴⁰ But the People's Tribunal failed in telling the whole story of Antonescu's genocidal project, and the Jewish organizations did not participate – as legal representatives of the victims' biggest community – in the judicial process. The comprehension of a State-organized crime, according to Omer Bartov, must start with the end, bringing to light information and going back towards the causes that made the genocide possible¹⁴¹ (the approximate way in which Raul Hilberg acted when trying to explain the destruction of the European Jewry)¹⁴², a strategy that, in the Romanian case, missed.

5.4. Competence of the investigation bodies

The first two laws adopted in January 1945, which Pătrășcanu, Romanian Minister of Justice, subsequently declared he did not acknowledge any more,¹⁴³ established the judicial mechanism of the war criminals' trying, adjusted later through the Government Groza law. The accusers were collecting the proofs and drawing up the bills of indictments, on the basis of which were drawn up the registers of the Council of Minister and thus the war criminals were sent to court. Most of the times, the bills of indictment were written in haste, with many lacks, with no judicial strategy and no adequate method. Yet, during the investigations, which started at the end of 1944 but reached their climax in the spring of 1945, many elements and evidence of the Romanian Holocaust were revealed. Subsequently, due to the new law of the procommunist government, the accusers were given many rights (to order arrest, to collect evidence, to raid, to require the authorities to bring to them suspected individuals).

The warrants, issued by the Council of Ministers, could not be refuted. At the same time, the public institutions were obliged to offer all their support for the arrest of the defendants. The trials would follow the normal path of an action in front of the judges, the dispositions of the criminal Code being applicable to the extent to which they did not oppose the stipulations of the law. For the convicted there was only one way to appeal, to the Highest Court of Appeal. Subsequently, by derogation of the law, it was established for the appeals to be tried by the Supreme Court in the recess too, and for the head of the court to be present in the appeal trial.¹⁴⁴ The control on the debates was guaranteed by the meeting notes, briefly issued by the court.

The statute of 1947,¹⁴⁵ the first document ratified by the Chamber of Deputies with regards to the war crimes was written after several defects were revealed, as a result of the previous investigations, but also as a result of the obligations assumed in the Peace Treaty. The text of the law was actually recomposed, including the definitions of the London Convention in the patterns of the previous rulings. By hastening the trying of the perpetrators, the Romanian authorities reached several objectives: they prevented a possible delivering of the war crime suspects to the United Nations; they avoided the reestablishment of a special court in order to be able to integrate these trials in the activity of the ordinary courts, of the "professional magistrates",¹⁴⁶ they met Moscow's desire not to create a new People's Tribunal.¹⁴⁷

The new law established that the actions should be tried by the Court of Appeal, and the notice should be taken by the General Prosecutor with the Government's approval, a restriction eliminated after one year.¹⁴⁸ The Executive could therefore decide on the release of the defendants, but only after the finalization of the investigations. If the cause was pleaded in the absence of the defendant, his appeal in 30 days since the sentence was given had as a consequence the retrying of the cause. One of the most important stipulations of the statute, which was actually redefining the whole history of war crime investigation in the aftermath of the war, stated that the previously closed investigations could be reopened, "even on the sole ground of the proofs in the file".

5.5. Crimes and punishments

The constitutional decree on the basis of which were issued the statutes regarding the punishment of war crimes stipulated that the new courts had the authority to establish "criminal and political responsibilities".¹⁴⁹ This ambiguous phrase and the lack of expertise of the Romanian lawmaker, as we have seen above, gave birth to criminal offences that had not existed by then in the criminal law ("war profiteer", "guilty for the country's disaster", "guilty for the country's disaster by committing war crimes"), after what in 1947, the criminal acts were defined in agreement with the international documents. It is important to mention that in all cases, the punishments varied from 5 years of correctional prison to life forced labor, and for the war criminals the law stipulated the existence of the death sentence as well. The court could, at the same time, decide on the civil degradation and the confiscation of wealth; there were also established punishments for the accomplices, concealers, favorers, instigators and co-authors.¹⁵⁰

As some jurists estimated, the laws were ill-conceived, so many of the culprits could not be identified in accordance to the provisions of the statute. The legal unification in April 1945 was particularly visible in the analysis of two categories of defendants (the "war criminals" and the "guilty for the country's disaster"). The criminal offences defined on the basis of this statute (312/1945) can be ordered into three categories: "1) the participation in war against USSR and the Allies; 2) inhuman treatment (from forced labor to extermination) applied to war prisoners, to the civilians in the conflict areas, or resulted from political or racial reasons; 3) fascist-legionary propaganda". The legislator clearly aimed at several distinct professional categories, which could be accused of these serious

criminal offences: the military, the journalists, politicians and magistrates. It is important to say here that the punishing of propaganda, identifiable in different articles that allowed the suing of the journalists, opinion leaders, intellectuals, civil servants who had supported the national-legionary and Antonescu's regimes, was not formulated at the International Tribunal of Nuremberg".¹⁵¹ Here is what Romanian Prime Minister Petru Groza declared, in Mai 1946, about the faults had in view:

...we provided a political and collective responsibility of all those who formed the Antonescu government. We did not anticipate some or other people's guilt from a collective standpoint. [...] We are judges from a political standpoint. The People's Tribunal is just an executive body. [...] If we talk about 'major responsible people' then it is incumbent on us again and we must establish who are the responsible people and this is what we, the government, establish, collectively (emphasis added, A.M.).¹⁵²

Many sources speak about major political tensions in relation to the promulgation of the legislation that established the juridical framework for the war criminals' trying.¹⁵³ King Michael confessed to the USA political representative to Bucharest that "he fought the government for three weeks" and that he managed to make numerous revisions to the law draft, among which: the admission of the death sentence only for war criminals, the right to appeal to a higher court, the elimination of an article that gave the courts the right to try offences like disturbing the peace, the application of law for a determined period.¹⁵⁴

5.6. Controversies regarding legality and Constitutionality

From the very first trial, the defendants went to the Highest Court of Appeal, the only one they could turn to. Initially, there were three reasons that could be invoked and afterwards only two: "the wrong composition of the court" (non-observance of the number of 9 judges and/or their incompatibility) and "the wrong application of law" (other punishments than the ones provided by the law and/or the exceeding of the limit provided by the statute).¹⁵⁵ The court rejected each time as unfounded the appeals regarding the non-constitutionality of the 1945 law, and some authors spoke of the pressures put on the judges.¹⁵⁶ The fact remains that the magistrates were deprived, at the time, of immovability and stability, which could become an act of constraint.¹⁵⁷ Sometimes, the defendants'

attorneys invoked other reasons for the appeal as well, which were equally rejected: the bench's incompetence or lack of independence, the fact that the public accusers had not been sworn in or were not part of the judicial body, that the investigations had started before the formation of the court, that the death sentence was instituted (for criminal offences others than the ones provided by the Code of Military Justice during war), that the wealth of the defendant's family members could be confiscated too,¹⁵⁸ that the right to appeal was limited, that the principle of non-retroactivity was broken (for the law itself, but also because the term of applicability of the statute had been prolonged after its expiration as a result of the "royal strike"), that acts of commandment of military nature were submitted to jurisdictional control, that the principle of the separation of powers was violated (the arrests were ordered by the Council of Ministers) or that the law had been passed as the result of a report signed by the Minister of Justice, and not at the Government's proposal.¹⁵⁹

Some jurists asserted that the 1945 law on the war criminals was elaborated on the basis of the modification of a constitutional decree (special laws for the hearing and sentencing of war criminals).¹⁶⁰ This fear existed even for the first government officials after Antonescu, though Romania was in a constitutional prejudicial provisional state¹⁶¹. Yet, its writing was dictated by the commitments the country had made in front of the Allies and also by the domestic pressures, mainly directed by the communists.¹⁶² The provisions were also regarded as anti-constitutional because they breached given articles of the fundamental law (the interdiction to establish special jurisdiction, the interdiction to establish the wealth confiscation punishment, etc.).¹⁶³ Avram Bunaciu, chief public accuser maintained however that the statute was constitutional, because the special court heard given facts, not given trials or given persons, suggesting thus that they were not *special* but *specialized* courts. As for the exception of non-constitutionality regarding the establishing of the death sentence, he concluded that "a punishment cannot be non-constitutional". The law, the chief public accuser continued, represented, in fact, the observance of the government's commitment to search for and punish the persons guilty of war crimes.¹⁶⁴ Furthermore, the constitutional decrees took up only partially the provisions of the constitution of 1923, and the first decree was regarded as incomplete, as long as the imperative requirement in the Armistice Convention regarding the hearing of the war criminals had been assumed by the Romanian State after it passed.¹⁶⁵ In

fact, even the legality of the death sentence became subject of debates in the Romanian Council of Ministers.¹⁶⁶

Among the criticisms against the Government's decisions regarding denazification there was also the one regarding the inexistence of the notification from the Legislative Council. The criticism can also be found in the appeal submitted to the supreme court of justice by the defendants of the first group of war criminals.¹⁶⁷ The institution in question – the Legislative Council – was created on the basis of the 1923 Constitution (art. 76) with the purpose to make sure, by issuing the consultative notifications, that the laws are legal and constitutional. "A body of legislative technique" whose functioning was ruled in 1925; the Council also survived in the period 1938-1944, being the "only body that tried and sometimes managed to moderate the legislative excesses".¹⁶⁸ Not only the communists tried (they abolished the Legislative Council in 1948¹⁶⁹) to avoid the legal function of this institution, but other members of the Government too. The first laws regarding the punishment of the war crimes promoted by the Rădescu Cabinet were not even submitted to notification.¹⁷⁰ The explanation was that only some of the clauses of the 1923 Constitution were taken on in the 1944 Constitution, and the one on the notification of the Legislative Council was not one of them.¹⁷¹

One thing we find worth mentioning is that the pretended opposition of the different figures (groups, parties) in the Council of Ministers – as the communist propaganda attacked¹⁷² – referred strictly to the legality of the acts drawn up by the new Government. The democratic culture was the one that grounded the fears that the constitutional modifications are beyond the legal framework, which could have generated significant legal and political problems. For the rest, their firmness in the issue of the arrest and punishment of war criminals cannot be doubted.¹⁷³ The confusion skillfully fuelled by the communists on the dichotomy "democrat vs. fascist"¹⁷⁴ was proved a little later, when the members of the historical parties were accused of "having installed the fascist dictatorship".¹⁷⁵

Aside from its novel role in incriminating the war crimes (by then, no investigation on the launching of a war of aggression had been finalized), another special court, in a different part of Europe – the court of Nuremberg – was criticized for many lacks.¹⁷⁶ For instance, the principle *Nullum crimen sine lege* was not entirely observed, and the court did not debate the acts committed by the Allies.¹⁷⁷ As Michael Shafir noticed, denazification is today based upon a myth¹⁷⁸ that has grown over time, making failure a synonym of success.¹⁷⁹ Thus, what happened in Romania

(problems of constitutionality, of law enforcement, the lack of credibility of the courts that tried the war criminals, etc.) was often put down to Romania's sovietization. Things are not as simple, and the answer cannot be but a nuanced one, as the causes mostly represent a problem of the Romanian laws on war criminals, like in all similar cases after World War II.¹⁸⁰ We should also say that the breaching of the constitutional provisions was made not only in the case of the war criminals' hearing and punishing laws, but also in the case of other fundamental statutes for the organization of the Romanian post-war State. As we have shown above, these were generated by the exceptional measures that the transition from a dictatorial regime to a democratic one required, by the transition from the state of war to the state of peace, by the necessity to punish crimes of such amplitude in the absence of a precedent and of legislation, by the acute political conflict.

6. War criminals' trials

6.1. Statistics and periodization of the trials

In order to better understand the role and activity of the People's Tribunals in the period 1945-1946, as well as that of the ordinary courts that tried later the war criminals, we should appeal to statistics. Unfortunately, the research in the field presents nowadays only disparate details on the quality and quantity of the trials. The specialists were not interested in these quantitative details, though their role seems vital to us, and the documentary evidence is not totally missing. Although the special courts were abolished at the end of the June 1946, sentences were handed down after that date too in the pending trials. Furthermore, after 1947, the cases were taken over by the Courts of Appeal, and starting with 1955 (after the abrogation of legislation) the persons accused of war criminal offences were, after a short release, rearrested and tried for the offence of "fight against the working class". If we try to find the number of those who were tried by other States, the picture gets even more ambiguous. All these details complicate the research and limit us, for the moment, to exposing some possible figures.

Some authors maintained that until May 1946, so shortly before its abolishment, the People's Tribunal in Bucharest had heard 15-16 groups of war criminals, i.e. several hundreds of persons.¹⁸¹ According to a

bureaucratic evaluation, at the beginning of April 1947, therefore two years after the adoption of Law 312/1945, 657 persons had been heard by the Courts in Bucharest and Cluj, as a statistics on the confiscation of the assets of those persons shows, with the note that not all the people convicted received this reparative punishment too.¹⁸² But the most detailed statistics reveals that until 1949 at Cluj (People's Tribunal and the Court of Appeal) 909 persons were convicted and 70 were under trial, and in Bucharest (the same courts), 805 had been convicted and other 148 were under trial.¹⁸³ The court of Cluj generally gave harsher sentences than the one in Bucharest, most of the trials being about the atrocities perpetrated during the Hungarian administration of Northern Transylvania.¹⁸⁴ The punishments applied in Romania show that the overwhelming majority of the individuals identified received many years in prison, in agreement with the high rate of sentences in the east of the continent. These figures demonstrate that the Romanian justice found very few guilty persons, compared to some European justice systems, where the number of the convicts amounted to thousands or tens of thousands. For instance, in Hungary, over 16,000 persons were convicted.¹⁸⁵

A special debate should be held on the situation of the Romanian citizens convicted by other states. Between July 1941 and December 1946, over 70 Romanian war criminals were sentenced by military courts on the territory of the Soviet Union.¹⁸⁶ In 1955, the Romanian authorities took over from the Soviets, with no further indications, 193 Romanian war criminals, sentenced by military courts, and our legal system acknowledged the past sentences. These persons were also subjects of the Decree no. 421/1955, some of them being released, while others had their punishments reduced to half.¹⁸⁷ After a few years, in 1958, in the Romanian prisons there were 117 war criminals.¹⁸⁸

The Romanian trials started in 1945 and ended ten years later, when the special statute law was abrogated. Subsequently, the sentences did not serve any more the purpose of finding out the truth and punishing individuals for their war criminal offences, but rather the will to eliminate those who were regarded as the enemies of the new regime. Jean Ancel tried to draw up a phasing of the trials, identifying three main stages (23 August 1944-6 March 1945; 6 March 1945-30 December 1947; 30 December 1947-1955); the time boundaries were defined in accordance with the changes of the political regime and with the monopolization of the State institutions by the communists.¹⁸⁹ We only partly agree with this division, preferring a phasing that would combine the internal and external

political evolutions with the legislative ones and with the justice's action, following Norbert Frei's model.¹⁹⁰ In this case, the phasing would look like that: a) the early phase – incipient legislative measures, arrests and the draft of a special court (23 August 1944 – April 1945); b) the mature phase – the finalization of legislation, intense investigations and arrests and the occurrence of the most important trials under the Soviets' pressure (April 1945-1947); c) the late phase – trials of no special intensity (with the exception of the pogrom of Iasi trial), followed, in the last stage, by the releases (1948-1955). However, we must state that while in Europe the last war criminals were released in 1989,¹⁹¹ in Romania the last convicts left prison in 1964.

6.2. The topics of the trials

The trials organized by the end of the '50s were, without exception, collective trials. The first ones played a pedagogic role, hearing acts incriminated by the legislation that had just been elaborated by the Government: participation to war against the USSR and crimes in the occupied territories or in the territories that the Romanian army had entered (Bessarabia, Bukovina, Transnistria, Crimea, etc.), inhuman treatment of given categories of people (forced labor, deportation and extermination of Jews from the territories that belonged to Romania or USSR, the imprisonment of communists in different camps, etc.), propaganda in favor of the dictatorial State and in the defense of Nazi Germany's ideology and actions (the journalists accused of "fascist and Hitlerite" propaganda and of having supported Antonescu's regime, civil servants involved in propaganda, etc.). The ones tried were journalists accused of propaganda and support for the pro-Nazi regime, commandants and personnel of the camps in Transnistria, former employees of the State intelligence, persons accused of having organized and participated in the pogrom of Iasi, members of the Antonescu administration, etc. The Romanian Minister of Justice, Lucrețiu Pătrășcanu, described the procedure by which the groups of war criminals were made up:

I considered it right for the justice to be administered not on the basis of categories, but simply on situations. At the root of this group [Antonescu group, A.M. n.] lie objective criteria. I thought I must form a category of those who were permanently on the ministerial benches.¹⁹²

The future leader of the Romanian communists, Gheorghe Gheorghiu-Dej, also confirmed the procedure: "Of course they could be sent to court all together or in groups. For a better technique of the actions, they thought it advisable to make up groups."¹⁹³ But most likely, the criteria that the formation of the groups of defendants was based on, were procedural (objective) and/or political (subjective) ones: the Transnistria trials, the "major criminals" trial, the journalists' trial, the Gendarmerie trial, the Iasi pogrom trial, the SSI trial, etc. Subsequently, in the '50s, the trying of war criminals in groups was given up.

The first trial played an important pedagogical role, hearing crimes from the occupied territories (i.e. Odessa), the deportation and extermination of Jews from Bukovina, the abuses on the communists imprisoned at Tg. Jiu, the situation of the internees and inhabitants of Transnistria (camps and ghettos in Vapniarka, Bogdanovka, Dumanovka, Mostovoi, Moghilev, etc).¹⁹⁴ The trial started in May 1945 and lasted for 8 days. There were 46 defendants, indicted in the 72 pages of the bill.¹⁹⁵ Among the defendants, there were generals and high rank officers of the Romanian Army, the former military county chief of the city of Odessa (Gen. Nicoale Macici,¹⁹⁶ whose name was also the name of the group), the former governor of Bukovina (Gen. Corneliu Calotescu), etc. The oldest of the defendants was 57, and the youngest 34. 12 persons were missing. This was a huge trial, which involved impressive resources: almost 500 witnesses (100 for the defense and 400 for the prosecution), thousands of pages of documents. The defendants received penalties from capital punishment (Nicolae Macici¹⁹⁷ and other 27) to 2 years of prison, civic degradation and confiscation of wealth. The death penalty was commuted to life in prison.¹⁹⁸ Behind the closed doors, the member of the Romanian Government talked one year later about the possible outcomes of the commutation of punishments, the Prime minister arguing that this decision had rather humanitarian causes.¹⁹⁹

6.3. The trial of the Antonescu group

The most important trial was the one in which the former head of State, Ion Antonescu, and other 23 close collaborators were heard.²⁰⁰ The Marshal and the group were tried at Bucharest and not at Nuremberg, as a result of the commitment made by Romania at the Armistice Convention. In this 16th trial of the People's Tribunal, 16 defendants received the capital punishment, and eventually only 4 were executed. 23% of the

charge focused on the Holocaust (the process of romanianization and its outcomes on the Jews, the pogrom of Iasi, the massacres of Odessa, the deportation to Transnistria, the extermination camps). The estimation of the number of victims included the 10,000 Jews for the pogrom of Iasi and tens of thousands of deportees to Transnistria, with no official figure. Ion Antonescu admitted, in the trial, that between 150,000-170,000 Jews were deported to Transnistria.²⁰¹ The trial modified the perspective on the Marshal's endless loyalty towards Hitler; the trial depositions also brought out to light the failure and the limits of Antonescu's regime.²⁰² However, the Army regarded the Marshal's arrest as an action against Romania.²⁰³ Furthermore, the fact that the political leaders present in the trial took up Antonescu's cause was just a page of propaganda. In reality, as the documents in the file show us, almost all of the political representatives openly condemned Antonescu's regime.²⁰⁴

Some of the ministers of the Romanian Government tried to speak up for given persons from this group (for Dumitru Popescu,²⁰⁵ for instance, former Minister of the Interior between 1940 and 1944), while other members of the Executive considered that only the People's Tribunal had the right to settle the case.²⁰⁶ Much emphasis was placed on the idea that the trial, besides being a priority, was a mainly political one, presenting the acts of the "major war criminals", persons identified by the Government alone. Furthermore, the communists opposed the possibility for the trial to last as much as the Nuremberg one regarded as "interminable". Image also played an important part in the proceeding, which was seen as a palpable action that might convince the Allies of the good intentions of the Romanian authorities as regarded the war criminals' indictment.²⁰⁷ Thus, after 10 days (6-17 May 1946), Antonescu and his main collaborators received the sentence, the four executions being the only capital punishments ever applied in Romania in relation to war criminal offences.

6.4. The organization of the trials

The research on the war criminals' trials in Romania is, as we have shown above, still at the beginning, but we could however draw some conclusions. Generally, the defendants vehemently denied the accusations and blamed each other, trying to exculpate themselves. By doing that, they only offered the prosecutors serious, irrefutable and solid proofs of their guilt. The defendants were often submitted to confrontations, with either other defendants or witnesses for the prosecution. Generally, the short,

unequivocal answers gave the prosecutions no possibility to use them in any way.²⁰⁸ On the whole, the defendants and the witnesses for the defense were unconvincing in their arguments. The defense lawyers rarely managed to weaken the arguments of the adversaries. Most likely, the public accusers were not more convincing in the list of serious accusations they brought. This was due to the lack of credibility of the court, but also to the fact that common people had not learnt about the existence of the hundreds of thousands of victims, not even after Antonescu's regime collapsed.²⁰⁹

The indubitable proofs of the perpetration of the war crimes mainly resulted from the accounts of the witnesses and from the documents collected by the investigators. We could say that, from our standpoint, most of the convicted were certainly guilty, while the rate of the individuals who were unjustly convicted or received unjustly big penalties was a small one. Even if some of the accused admitted part of the treatment they had applied to the deportees, the major massacres were not assumed. But the survivors' testimonies and the documents of the institutions of public order and of the Army made the difference. Yet, the witness-victims were not included in the proceeding, as they should have been, the politicization of some trial re-victimizing, in fact, the former deportees.²¹⁰ In few cases, the judges were convinced of the innocence of the some defendants. Without exception, the people tried in their absence received maximal penalties, compared to the other defendants. Furthermore, the accused frequently mentioned, as exculpating arguments, the involvement of the Germans, the orders they had received, and few used oblivion as excuse.²¹¹

The witnesses brought by the defendants did not always speak about facts related to the indictments, but other actions too, which favored the defendants.²¹² It often happened for the witnesses for the defense to be unable to answer concrete questions. They declared they were not present in the actions accounted by the accusers, offering ambiguous data.²¹³ On the other hand, the witnesses for the prosecution who held functions in the leading bodies of the Jewish communities made elaborated, detailed declarations. They presented enough data to evaluate, for instance, the situation before and during the deportation. The breaches, the robberies of the Romanian authorities and, particularly, the important details about the crimes against the Jewish population made the atmosphere during the trials.²¹⁴

The survivors of the deportations came back to the country before the war ended and could thus preserve their stories about their Transnistria

experience. In spite of the physical and psychic traumas, some of them had the power to recollect or even write down the details of their deportee life in a compact community. So can be explained, for instance, the recollection of common details about violent events.²¹⁵ How close those accounts were to reality and how was memory affected by the express need of recollection (the precise requirements of the investigators) is an analysis to be done. But we must notice that the testimonies taken shortly after the events in question, namely the ones made during the trials, have a higher degree of relevance and fidelity than the ones made after decades.²¹⁶ Therefore, the depositions of the former deportees were, at the time of the trials, important evidence in the hierarchy of guilt.

The accused and their defenders raised the problems of the procedural deficiencies in the organization of trials, such as: the non-hearing of the witnesses for the defense, the non-confrontation of the witnesses for the prosecution with the perpetrators, the interdiction to contact the lawyers, the time limitation for the defense during the proceeding, misstatement of the witnesses' position, media lynching, etc.²¹⁷ Some of the culprits denounced expeditious investigations or, in some cases, the absence in the examinations of given witnesses, who had sent, instead, written depositions.²¹⁸ The defendants sent many memoirs to the chief public accuser during the investigations, stating that they had not been informed about the accusations, that they could not study the file or that they could not get in touch with their family to hire a lawyer. Some of the accused asked for documents from different archives which did not exist anymore and which might have exculpated them.²¹⁹ At the same time, the accused sent many memoirs from prison requiring either for the presented documents to be carefully analyzed, or for more witnesses, or they were proposing different further elements to be added to the examinations made by the accuser.

The abominable crimes and massacres occurred under Antonescu's regime (1940-1944) in Romania led to the disappearance of a significant part of the Jewish community. These crimes took place in the territories incorporated in the Romanian state or under its administration: Bessarabia, Bukovina and Transnistria. The deportation and extermination were enforced by the Romanian authorities, who were responsible for the disappearance of 350,000 Romanian Jews during the Holocaust.²²⁰ For these crimes, the war criminal trials found very few guilty individuals. One of the causes for this, besides the political and legal ones, was the lack of evidence, subsequently acknowledged by the public accusers. Moreover, the failure of the judicial process was confirmed by the Soviet

authorities, but also by the former Romanian public accusers.²²¹ The reasons for that were diverse (interventions²²², at the highest level, for the release of the arrested Army heads and magistrates, including through the Soviet Generals' intervention; the unjustified acquittals; the organizational deficiencies; the defective strategy of arresting only the major perpetrators and instigators; the Soviets' indifference towards the requirements related to the witnesses and documents from the Soviet territories); the assessments are that over 70% of the war criminals managed to get away unpunished.²²³

The conclusions that Alexander Victor Prusin reaches, who dealt with the trials that took place in the Soviet Union, help us understand the similarities with the trials that took place in Bucharest in the period 1945-1946. There are many common elements between the courts of the two States: the selection and accusation according to the degree of representativeness; sentences for most of the accused; the selection and grouping of the accused according to their activities during the war, in a certain region; the submission of the accused to long and numerous examinations (sometimes at night, especially in the case of those culprits who were regarded as very important ones, like in the case of the "Antonescu group"); the peripheral role played by the defense attorneys, who could not get in touch with the culprits but during the hearing and could not closely examine the witnesses; the attention the trials were paid in mass media; the selection of the audience; the creation of atmosphere during the trials, etc. In both cases, the bill of indictment particularly insisted on the war of aggression against USSR and on the atrocities perpetrated in the war territory against the Soviet citizens. Of course, there are differences in details too, one of these being the nationality of the convicts – in the Soviet trials (especially in the ones at the end of the war) most of the convicts were German war prisoners. Another important difference is the public confession,²²⁴ chosen by most of the USSR culprits and rarely or not at all found in the war criminals' trials in Romania in the period 1945-1955.²²⁵ From our standpoint, in Romania there were no "show-trials", and this was the significant different, that entitles us not to place the Romanian trials under the Soviet umbrella until the end of the 1950s.

6.5 The destiny of the convicts

After imprisonment, the convicts²²⁶ were not dealt with in groups any more, as one might think (and as they had been tried), but individually, according to different ideological criteria or to the conduct they had in prison. Most of them were treated in a severe manner, the communist regime being not willing to limit penalties until 1955/1962-1964,²²⁷ when they were amnestied. Some of the people released in the mid-1950s were subsequently rearrested and tried for the same acts, being accused this time of “fight against the working class”. An interesting and quite defining, at the same time, fact for the arbitrariness of the communist legal system was that the trying was made on the basis of the same evidence as in 1945, and in some cases, the one who sentenced them, after 10 years (in 1955-1957) – Alexandru Voitinovici, the chairman of the Supreme Court of the Socialist Republic of Romania – was the former chairman of the People’s Tribunal in Bucharest. The appeals made by the defendants, maintaining that they had been tried for the same facts and on the basis of the same evidence, were rejected by the supreme court, on the grounds that the law impeded it to evaluate the proofs in the file and therefore to quash the sentence.²²⁸ In reality, many of them were released only after almost two decades in prison.²²⁹

Many times, the surveillance continued after the release too, though they were over 65, and could not be regarded as dangerous any more.²³⁰ On the other hand, the reconciling gesture made by the communist regime (the pardon granted by State decrees)²³¹ continued after the release too, especially in the case of the former military: the release of personal military record with the rank they had before arrest²³² or the right to pensions (in the late 1960s). We should mention that this did not happen only in the case of the war criminals, but also of many former political prisoners. But rehabilitation was a process of negotiations, where concessions and compromises (letters sent to the former prison mates, texts about the achievements of the communist regime, autobiographies where they agree to declare themselves guilty for the war offences, etc.) were made in exchange for civil rights and for a frail social integration. The informative surveillance in the case of some of them proved that, in spite of the proofs of ‘re-education’ written and rewritten in prison or after release, the anti-Semitism did not disappear. In some case, the relationships between the former comrades and participants in Antonescu’s genocidal project continued.²³³

6.6. The role and the function of trials

The function of the war criminal trials was understood in a dual manner: on one hand, the communist historiography and legal literature glorified the role of the courts, on the other hand, the reactions after 1989 completely rejected²³⁴ the idea of justice that the special court should have done. In reality, in our opinion, these trials should be examined and studied thoroughly, in order to be able to reach pertinent conclusions, while the interpretation should consider the phases shown above, the political context and the legislative modifications. Moreover, the political disintegration, the huge social problems, the inheritance of the collaboration – all of these influenced the post-war trials. Here is the opinion of the American historian Devin O. Pendas: “Eastern European Nazi trials were thus marked by a complex web of political instrumentalization and efforts at genuine justice that can be disentangled only on a case-by-case basis – if then”.²³⁵ At the same time, like Donald Bloxham notices, there is an incongruity between the way in which these trials were organized at the national and at the international level, and especially in the manner in which crimes were understood and punished.²³⁶ Justice often appears to be, when analyzed by the specialists who criticized its deficiencies and lacks, illusory or even absent. Moreover, the palpable results of the trials rarely met the public’s great expectations. Most probably, in Romania there was no true desire of the public to convict the perpetrators. The pressure on the courts was obvious in many cases, and, at the same time, the act of justice did not manage to convince whether the target was to find out the truth and to punish the culprits or just to make a necessary action in the reconstruction of the States.

One of the great gains of the trials organized in the aftermath of the war, in both the Soviet Union and the States under German occupation or allied to the Reich, was the information and testimonies collected, which gave, for the first time, an outline of the genocidal project and of the crimes chain. In spite of all of the factual errors, of the errors in the assessment of the number of victims or in the identification of the direct perpetrators, this type of documents remains a first-hand one in the investigation of the Holocaust. The trial proved the involvement of the military authorities in the atrocities occurred in the occupied territories (the organization of ghettos and of forced labor camps, the wearing of racial symbols, the supervision of and participation in the massacres). The courts also emphasized the involvement of the army in the conscious and

consistent violation of the international laws. For some of the Generals or high rank officers, the authorities could not identify direct evidence. Yet, the incrimination was made by establishing that the massacres/atrocities took place in their jurisdiction (eyewitnesses spoke about the major crimes occurred in the jurisdictions where they held the highest military rank and therefore the decision was entirely theirs).²³⁷

Arguments in favor of the utilization of these documents were also brought by Tanja Penter, who finds them important because: a) they include significant details on different places and on the life in ghettos and camps (sometimes these sources are the only written testimonies about the existence of concentration camps); b) they include information on the profile of collaborators and their motivations; c) they express the perception and possible definition of collaborationism. The documents of the trials are not unbeatable, as they do not tell us, for instance, who was executed without a sentence, who was unjustly indicted or who was not indicted at all.²³⁸

The war criminals' trials represent an inestimable source of information that asks to be contextualized and completed with other sources; they offer an important perspective on the criminal legal system, as well as on the Holocaust. At this moment, when research is at its beginnings, we cannot draw very precise conclusions on the veracity of the act of justice for all Romanian trials, but as we underlined above, for each trial apart. But the Soviet sources offer important indications, even for a "grey zone", a complex phenomenon, which received little attention from the historians in general and not at all in the Romanian historiography. The declarations – by which we could discern the motivations of collaboration – should be examined very carefully. Thus, the nationalist attitudes seem to play a less important role than they were initially thought to, while pragmatism and material benefits seem to prevail. Anti-Semitism might also have an important connotation, though it was rather peripherally treated in the trials (an attitude that is more related to the Soviets' ambivalent vision after the war, with the universalization of the Holocaust in order to minimize the Jewish suffering).²³⁹

Like Victor Alexander Prusin noticed, in the war criminals' post-war trials no faked proofs were used because there was no need to, unlike in the Great Terror. The crimes were obvious, the perpetrators were known, the juridical support had been constructed meanwhile, and no "tricks" were necessary to make the justice system work. Like the trials in the Soviet Union, the trials in Romania played an important ideological role,

as the construction of legitimacy needed a tribune, where the messages to the domestic or foreign enemies could be sent from. The politicization of the major trials was a phenomenon that comprised all of the states under the Iron Curtain. Moreover, the trials were used by the new power (the communist parties in general) to demonstrate (especially to the foreign partners, and particularly to Moscow) that it was determined to convict the war criminals, like the conventions of the armistice established, and to hinder any domestic coalitionist attempt with the (ideological) adversaries.²⁴⁰

In spite of all the advantages that the examination of the war criminals' trials presents, there is a risk for the many pieces of the genocidal puzzle not to be ever brought out to light, in spite of the specialists' insistence. Far from being perfect, the criminal system of Nazi inspiration created the impression of a modern crime machinery, commanded from outside. A toxic experience of "making history" and a series of rationalizations/capitalizations and rulings of the language, transformed the bureaucrats into innovators (in the crime field) and characters who can ingeniously solve problems. As Christopher Browning shows, laws and formal rulings, all have melted, over time, into a strong opaque/tacit network of secret directives, vaguely authorized, orally communicated, with no further explanations and order; the implication invested the mere bureaucrat with power – becoming, beyond laws and clear orders, an "issue of consonance and synchronization". The implied consensus was demonstrated in many studies on local phenomena/massacres. Yet, the parameters and objectives regarding the Jews' extermination came from the centre, where the general lines of actions were drawn up.²⁴¹

The significance of the war criminals' trials that took place in Romania is completely different from the ones in France, for instance. Unlike the trial of the "Antonescu group", Maurice Papon's trial, the Vichy official, had an impressive audience, resulting in real debates on how France faces its own past. The French action played an important educational part and an assumed symbolic role.²⁴² As we have seen above, the very complicated context in which the major war criminals' trial took place in Romania, the politicization, the lack of transparency, the ideological mark, made impossible the definition of Antonescu's genocidal project. The story of the evil was only partly and unconvincingly told, because the emphasis on the war in the East, the abstractization of victims, the toxic mixture between politics and history were causes of the State organized amnesia. But under this thick crust of amnesia, an anti-Russian feeling

and nationalism developed, preserving and at the same time feeding on the idea that the trials were organized by Moscow in order to punish the Romanian people.²⁴³

7. Conclusions

In the end, we will present several of the conclusions of this research. We started by trying to question the relationship between justice and history, stating that our examination of the past is not a legal, but a historical analysis, with its specific sources and methods. The hearing and sentencing of the war criminals, started before the end of the world war, remained, despite some important moments like the Nuremberg trial, unfinished, and, beyond the myth, proved to be rather a failure. Beyond the official cooperation, the Allied had a deeply different understanding of the way in which justice had to be done in order to find out the truth and to punish the culprits. Thus, the Soviets applied the golden rules of popular justice, transforming the trials into judicial plays on stage, meant to serve the political regime and propaganda, while the Allies tried to offer the defendants the possibility to use their civil rights to defend freedom. Forced, in the internal and international context, to take similar measures, Romania initiated a process of denazification at least as controversial as the one that took place in the states or occupied by or allied with Nazi Germany. The Romanian officials did not have the necessary expertise or the access to the documents that were being drawn up at the time. The Soviets' pressures and interference often came up against the Bucharest officials' intention to maintain the legality of the measures of denazification.

The legislation on the war crimes was an exceptional one of Soviet inspiration, but given the extraordinary character of the facts, it required special offences and procedure of suing and sentencing. Deprived of credibility, the ordinary courts could not try such actions, and the newly created ones were quickly accused of partisanship. The main statute law, promulgated in April 1945, was finished by the communists, with many lacks, so a lot of modifications were needed in the decade to come. Yet, the initial project was created by the governments in which the communists were a minority, which proves the Romanian political leaders' intention to indict the culprits.

The war criminals' trials took place under the Soviets' pressure, the stake being that of punishing those who were guilty of the campaigns from the Russian territories. The legal proceedings brought to public light the permanent dispute between nationalists and communists. Given these aspects, the issue of the Jews' annihilation became a secondary one, most of the Romanians perceiving in these trials the Soviets' retort to those who defended their country.²⁴⁴ The trials organized in groups by the two People's Tribunals and subsequently by the Courts of Appeal benefited by an unusual body of magistrates for the Romanian legal system, who sometimes managed to solve the tasks they had assumed. The procedural deficiencies resulted from the public accusers' dilettantism and from the legal competences of the new investigational bodies. Moreover, the legislation gave birth to criminal offences that had not existed, by then, in the Romanian criminal law. The culprits raised important problems of legality and constitutionality, problems that could be found, given the exceptional character of facts, in the case of most of the special court created in post-war Europe.

The collective trials in Romania took place in three distinct phases, in the span of one decade (1945-1955), the last war criminals being released in 1964. The statistics of trials show that in Romania, until the end of the '40s, between 1,500 and 2,000 persons were convicted – a small rate compared to the other European States, while the number of Romanian citizens convicted for war offences by other courts in USSR or Europe amounted to several hundreds. The procedures in the Romanian courts investigated the participation in war against the USSR, the crimes in the occupied territories, deportations and massacres.

If the first trial (the "Macici group") played a pedagogical function, the "Antonescu group" sentenced the "major criminals" in Romania, without managing to fully clarify the structural issues of the Romanian Holocaust. In general, in the trials organized in Romania, neither the defendants nor the accusers were credible in their statements, and so the suspicion of guilt of the accused was maintained; but the witnesses and the documents made the difference. Reasons for the small number of convicts compared to the other European States were not only the deficient performing of the Court and of the public accusers, but also the Soviets' interferences and lack of cooperation. Furthermore, the celerity required by the officials and the absence of procedures actually led to the violation of many legal norms, most of the procedural lacks affecting, first of all, the accused. Yet, there are some differences between the trials organized in Romania and

those organized in the USSR (for instance, the nationality of the accused, the absence of public confession, the organization of the defense). Until the end of their lives, the convicts were harshly treated by the communist regime and, with few exceptions, were regarded as dangerous.

Considered exclusively in the perspective of politicization, the function of the trials in Romania was wrongly interpreted. The shortcomings of documentation and contextualization affected the perception on the role of the Romanian special courts, which did not manage to go beyond the paradigm according to which the Soviets tried the Romanian leaders for having attacked the Soviet Union. Despite all of the demonstrable errors, the trial documents offer us many elements about the special justice and Holocaust. Whether the trials in which persons accused of war crimes were heard, served or did not serve the act of justice, as Tanja Penter wonders, is a question with a rather contradictory answer. On the one hand, because there were authentic criminals sentenced to severe punishments, while others, just as guilty, received milder punishments due to a series of palliating circumstances, and on the other hand because innocent people paid dearly the errors of the legal system. So another very important question to be asked is how many of them were convicted for political reasons and how many because of the miscarriages of justice. The flexible procedures and laws also left much freedom to the special courts.²⁴⁵ Most of the specialists think now that while in Western Europe the trials were generally fair (the legislation, the legal conditions for the organization of the defense, the attention paid to the victims), in the States under Stalinization, the trials were, especially in the late '40s, politicized, and the judicial act corresponded rather to the Soviet model of justice. Between the Soviet case and the trials heard in the areas of Western occupation or in Western Europe, lies the untold story, a story with many questions, of the states of Eastern Europe (Romanian case included).

Beyond the main component – object of scientific reflection – the investigation and research of the post-war trials could also hold an important public function. Once the documents edited, serious interdisciplinary research undertaken and debates and academic polemic started, the topic might lead to a deeper self-examination process on the recent past and responsibilities, as it happened in Germany at the end of the '50s-'60s.²⁴⁶ In Romania, there existed and still exists a historiographic paradox related to the subject: on the one hand, the topic did not arrest the academic attention of specialists; on the other the debate could not take place in the absence of studies. Therefore, the public included the

subject in the “taboo” chapter, remembering only a few controversial details of the “Antonescu trial” (the accusations on the war in the East, the politicization of the trial, the execution, etc.). Even among the specialists in the recent past, the references to post-war justice have often taken the form of exhaustive references.

As we have shown above, after the communist regime collapsed many of our compatriots asserted that Moscow staged these trials and tried the Romanian patriots. Our opinion is that, despite the law breaches and the procedural defects, most of the people tried and convicted, even if they were few, were authentic criminals. Unfortunately, the trial did not manage, however, to reveal but very few of the abominable facts, of the massacres or extermination actions. There are many explanations for that, and, to quote Yehuda Bauer, these trials did not manage to bring in the foreground ideology – the main cause of the Holocaust.²⁴⁷ We do agree with the opinion that, though post-war trials in Romania had an obvious tendency towards politicization, they occurred in a complex political context, with a judicial support similar to that of the other special courts in Europe.

NOTES

- ¹ I am greatfull to Prof. Dennis Deletant who kindly read this article and made important suggestions. All eventually remainig errors are entirely of the autor's.
- ² For France, for instance, Peter Novick estimated that the number of the people killed (before and after the liberation) amounted to 10,000-15,000 persons, though the assessments go from several hundreds to 120,000 (Peter Novick, *The Resistance versus Vichy. The Purge of Collaborators in Liberated France*, Chatto & Windus, London, 1968, p. 202-208).
- ³ For details, see István Deák, Jan T. Gross, Tony Judt (eds.), *Procese în Europa. Al doilea război mondial și consecințele lui*, translated by Lucian Popescu, Editura Curtea Veche, București, 2003, p. 16-17.
- ⁴ In this paper, I used the concept of "war crimes" in a wider sense for a better fluency and coherence of the discourse, although, as will see below, the Romanian legislation defined the perpetrators during war in different ways: "war criminal", "war profiteer", "guilty for the country's disaster" and "guilty for the country's disaster by committing war crimes". We must say that these notions, which do not exist in international law, could be used in the absence of jurisprudence and of a global legislation. The Romanian laws were conceived in the span October 1944-April 1945, with 4-10 months before the judicial explanations officially adopted by the Allies (Charter of International Military Tribunal, 8 August 1945). By the agreement signed in the capital of the United Kingdom, the offences were clearly delimited and defined, to make possible the indictment of the individuals who had perpetrated crimes in the name of the Axis ("crimes against peace", "war crimes" and "crimes against humanity"). It is only in 1948 that the Romanian statute law integrated the categories of crimes stipulated by the London Convention.
- ⁵ Dennis Deletant, *Aliatul uitat al lui Hitler. Ion Antonescu și regimul său. 1940-1944*, translated from English by Delia Răzdolescu, Editura Humanitas, București, 2008, p. 12-13. One of the books that were meant to (re)open the subject of the Holocaust is the volume about the pogrom of Iași, A. Karețki, M. Covaci, *Zile însîngerate la Iași (28-30 iunie 1941)*, prefaced by Nicolae Minei, under the aegis of Institutul de Studii Istorice și Social-Politice de pe lângă CC al PCR, Editura Politică, București, 1978. The authors lend credence to the idea that the pogrom was enforced by the German troops, the Legion members and soldiers who acted deliberately, with no institutional involvement of Romanian army units. Here is an excerpt from the volume: "The German wild troops were joined by isolated Romanian soldiers who, with no order and out of their own will, started to enter the houses, attics and cellars, to arrest and to rob" (p. 75). Ancel opined that one of the purposed had in view by the publication of the book was to mislead the Romanian

- historians who did not have access to documents (Jean Ancel, "Pogromul de la Iași din 20 iunie 1941", in Wolfgang Benz, Brigitte Mihok, *Holocaustul la periferie. Persecutarea și nimicirea evreilor în România și Transnistria în 1940-1944*, transl. from German by Cristina Grossu-Chiriac, Editura Cartier, Chișinău, 2010, p. 64. About the event in the summer of 1941, see Jean Ancel, *Preludiu la asasinat. Pogromul de la Iași, 29 iunie 1941*, Iași, Yad Vashem, Polirom, 2005; Radu Ioanid, "The Holocaust in Romania: the Iași Pogrom of June 1941", in *Contemporary European History*, 2, 2 (1993), p. 119-148; Haiya Feder Naftalyi, *Iași Context: the Pogrom of June 1941 and its Aftermath*, University of Texas at Arlington, PhD, 1998.
- 6 A few bibliographic references: Venera Teodorescu, *Activitatea primului guvern revoluționar democratic (martie 1945-octombrie 1946)*, in *Studii și materiale de istorie contemporană*, 3, 1978, p. 107-112; *Procese '46 – Sentințe '49 – Recursuri*, in *Revista 22*, no. 48, 2-8 December 1997; Ioan Opreș, *Procesul ziaristilor „naționaliști” (22 mai-4 iunie 1945)*, Editura Albatros, București, 1999; Cristina Păușan, *Justiția populară și criminalii de război*, în *Arhivele Totalitarismului*, vol. 7, nos. 1-2, 1999; Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *Evreii din România (1945-1965)*, Centrul de Resurse Pentru Diversitate Etnoculturală, Cluj-Napoca, 2003, p. 311-325 (Central National Historical Archives, Bucharest – hereafter called CHNA, collection CC of RCP – Cancelarie, file 13/1947, f. 2-13); International Commission on the Holocaust in Romania, *Raport final*, president: Elie Wiesel, editors: Tuvia Friling, Radu Ioanid, Mihail E. Ionescu, Editura Polirom, Iași, 2005, p. 319-337; Dinu C. Giurescu (ed.), *Istoria Românilor. Vol. IX: România în anii 1940-1947*, under the aegis of the Romanian Academy, Editura Enciclopedică, București, 2008, p. 569-581 and others.
- 7 The works, unequal in terms of scientific value and historical approach, that we are going to deal with in a separate paper, include documents from the trials organized by the People's Tribunals in Bucharest and Cluj. See Matatias Carp, *Sărmaș. Una din cele mai oribile crime fasciste*, preface by Lucrețiu Pătrășcanu, București, Socet et. Co, 1945; Idem, *Cartea Neagră. Fapte și documente. Suferințele evreilor din România: 1940-1944*, vol. I-III, București, Socec & Co./Societatea Națională de Editură și Arte Geografice "Dacia Traiană", 1946-1948 [2nd ed., Editura Diogene, prefaced by PhD Alexandru Șafran, 1996] (the documents from the war criminals' trials were included in the 2nd (focusing on the Iași pogrom of June 1941) and 3rd (entitled "Transnistria") volumes); the book was planned to have four volumes, but the last one, entitled "North Transylvania", has never been published; Petre Țurlea, *Monumente non grata. Falși martiri maghiari pe pământ românesc*, Editura Bravo Press, București, 1996; *Antonescu: Mareșalul României și războaiele de reîntregire*, testimonies and documents edited by Josif Constantin Drăgan, București, Centrul European de Cercetări

Istorice Veneția, Fundația Europeană Drăgan, 1991; Petre Țurlea, *Ip și Trăznea. Atrocități maghiare și acțiune diplomatică românească. Studii și documente*, Editura Enciclopedică, București, 1996; Alesandru Duțu, Florica Dobre, *Drama generalilor români (1944-1964)*, Editura Enciclopedică, București, 1997; Alesandru Duțu, Florica Dobre, *Distrugerea elitei militare sub regimul ocupației sovietice în România*, vol. I: 23 August 1944 - 28 December 1946, vol. II: 1 April 1947, Institutul Național pentru Studiul Totalitarismului, București, 2000-2001; Vasile Pop (ed.), *Istoria Ardealului privită prin documente. Crime și criminali de război. 1940-1944*, Editura Alfa, Iași, 2002 and others.

⁸ We mainly have in view the volumes edited by Marcel Dumitru-Ciucă, *Procesul mareșalului Antonescu*, Saeculum, Europa Nova, București, 1995, vol I-III. Different editions of the volume *Procesul mării trădări naționale* (Editura Mihai Eminescu, București, 1946) were published after 1990 with or without critical apparatus.

⁹ Ioan Opreș, *op. cit.*

¹⁰ One of the notable exceptions was Matatias Carp, who used many documents from the war criminals' trials in his book *Cartea Neagră*. Unfortunately, immediately after publication, the volumes were sent to the special collections of libraries, being prohibited to the public.

¹¹ Adrian Cioflâncă, "«Gramatica disculpării» în istoriografia comunistă. Distorsionarea istoriei Holocaustului în timpul regimului Ceaușescu", in *Anuarul Institutului de Istorie "A.D.Xenopol"*, tom XLII, 2005, p. 627-644 (a similar variant was published in the *Final Report* of the International Commission on the Holocaust in Romania, ed. cit., p. 341-354).

¹² *Cartea Neagră*, prohibited in the Soviet Union in 1948, subsequently published in the West, was published in an abbreviated form in Romania too: I. Ehrenburg, V. Grosman, Lew Ozerow, Vl. Lidin, *Cartea neagră asupra uciderilor mișeșești ale evreilor de către fasciștii germani în timpul războiului de la 1941-1945 în regiunile ocupate din Uniunea Sovietică și în lagărele de exterminare de pe teritoriul Poloniei*, I, Editura Institutului Român de Documentare, București, 1946. The whole story of *Cartea Neagră* in *The Unknown Black Book. The Holocaust in the German-Occupied Soviet Territories*, edited by Joshua Rubenstein and Ilya Altman, introductions by Yitzhak Arad, Ilya Altman, and Joshua Rubenstein, translated by Cristopher Morris and Joshua Rubenstein, published in association with the United States Holocaust Memorial Museum, Indiana University Press, Bloomington and Indianapolis, 2010, p. xix-xxxix. The book is particularly important because it was edited immediately after the war ended, most of the interviews being taken by the writers Ilya Ehrenburg and Vasily Grossman in different languages (Russian, Yiddish, and Ukrainian).

¹³ John Klier, "The Holocaust and the Soviet Union", in Dan Stone (ed.), *The Historiography of the Holocaust*, Palgrave Macmillan, New York, 2004, p.

- 276-295; Zvi Gitelman, "Soviet Reactions to the Holocaust, 1945-1991", in Lucjan Dobroszycki and Jeffrey S. Gurok, *The Holocaust in the Soviet Union. Studies and Sources on the Destruction of the Jews in the Nazi-Occupied Territories of the USSR, 1941-1945*, with a foreword by Richard Pipes, M.E. Sharpe, Armonk, New York-London, 1993, p. 3-27; see also the studies of Lukas Hirszowicz, "The Holocaust in the Soviet Mirror", in *Ibidem*, p. 29-59; William Korey, "A Monument Over Babi Yar?", in *Ibidem*, p. 61-74.
- ¹⁴ Adrian Cioflâncă, *op. cit.*, p. 636.
- ¹⁵ See, for instance, the papers published by the Center for Studies and Research in History and Military Theory, directed by Ilie Ceaușescu, brother of the secretary-general of the Romanian Communist Party (RCP). The volume edited by Mihai Fătu, Mircea Mușat (eds.), *Teroarea horthysto-fascistă în nord-vestul României: septembrie 1940-octombrie 1944* (Bucharest, 1985) is one example in this direction; the volume was also published in English: Mihai Fătu, Mircea Mușat (eds.), *Northyst-Fascist Terror in Northwestern Romania: September 1940-October 1944*, Bucharest, 1986. Among the authors and collaborators to the volume, there were: Ion Ardeleanu, Gheorghe Bodea, Mihai Fătu, Oliver Lustig, Mircea Mușat, Ludovic Vajda, Vasile Armina, Vasile Bobocescu, Ion Calafeteanu, Ladislau Fodor, Olimpiu Maticescu, Ion Pătroi, Gheorghe Unc. The editors justified the publication of the volume, besides the ordinary need to learn what happened in the period in question, by warning that "hostile elements, impregnated with revenge, revisionist ideas, defected from the P.R Hungary and living in different western countries, are spending their time falsifying the truth about the historical rights of the Romanian people in Transylvania" (p. VI).
- ¹⁶ A person who was close to dictator Nicolae Ceaușescu, Iosif Constantin Drăgan, settled down in Italy, sympathizer of the Legionary Movement, published, in obvious agreement with the policy of the regime of Bucharest, four volumes of documents: Iosif Constantin Drăgan (ed.), *Antonescu. Mareșalul României și războaiele de reîntregire*, vol. I-IV, Editura Nagard, Veneția, 1986-1990. After 1990, Drăgan continued his revisionist initiative (see *Antonescu: Mareșalul României și războaiele de reîntregire*, testimonies and documents edited by Iosif Constantin Drăgan, ed.cit.).
- ¹⁷ For a review of the field literature, see the excellent article written by the American historian Devin O. Pendas, "Seeking Justice, Finding Law: Nazi Trials in Postwar Europe", in *The Journal of Modern History*, 81 (June 2009), p. 347-368.
- ¹⁸ Donald Bloxham, *Genocide on Trial. War Crimes Trials and the Formation of Holocaust History and Memory*, Oxford University Press, 2001.
- ¹⁹ Michael R. Marrus, "The Holocaust at Nuremberg", in *Yad-Vashem Studies*, vol. XXVI, Jerusalem 1998, p. 5-41.
- ²⁰ Patricia Heberer, Jürgen Matthäus (eds.), *Atrocities on Trial. Historical Perspectives on the Politics of Prosecuting War Crimes*, published in

- association with the United States Holocaust Memorial Museum, University of Nebraska, Lincoln, 2008, p. xiii, xx-xxi; Devin O. Pendas, *op. cit.*, p. 349-351.
- 21 The idea of this preamble came from Adrian Cioflâncă's article "Istorie și justiție. Un model german pentru «procesul comunismului»", in *Caietele Echinox. Vol 13: Gulag și Holocaust*, Cluj, 2007, p. 121-13.
- 22 Charles Maier, "Doing History, Doing Justice: The Narrative of the Historian and of the Truth Commission", in Robert I. Rotberg and Dennis Thompson, *The Morality of Truth Commissions*, Princeton University Press, Princeton and Oxford, 2000, p. 269.
- 23 Maurice Papon was a high ranking official of the Vichy regime, and in this capacity he authorized the imprisonment and deportation of a big number of Jews. Subsequently, Papon was Police prefect in Paris, under Charles de Gaulle and Finance minister under Giscard d'Estaing. For his actions, he was sentenced, in 1998, to 20 years in prison (see Richard J. Glosan, *The Papon Affair: Memory and Justice on Trial*, translations by Lucy B. Golsan and Richard J. Golsan, Routledge, New York-London, 2000).
- 24 Henry Rousso, *The Haunting Past: History, Memory and Justice in Contemporary France*, Philadelphia, University of Pennsylvania Press, 2002.
- 25 Nancy Wood, "Memory on Trial in Contemporary France: The Case of Maurice Papon", in *History & Memory*, no. 11/1999, p. 41-76.
- 26 Richard Evans, "History, Memory and the Law: The Historian as Expert Witness", in *History and Theory*, no. 41/2002, p. 326-345; see also "Istorie și justiție. Un model german pentru «procesul comunismului»", ed. cit.
- 27 Mark Osiel, *Mass Atrocity, Collective Memory and the Law*, Transaction Publishers, New Brunswick, New Jersey, 1997, p. 84.
- 28 Devin O. Pendas, *op. cit.*, p. 367.
- 29 Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi Crimes Trials Changed the Course of History*, Palgrave Macmillan, New York, 2007, p. 31.
- 30 *Apud* Mark Osiel, *op. cit.*, p. 84.
- 31 Charles Maier, *op. cit.*, p. 269-270.
- 32 Carlo Ginzburg, *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice*, Verso, New York, 1999; *Idem*, "Checking the Evidence: The Judge and the Historian", in *Critical Inquiry*, vol. 18, no. 1/1991, p. 79-92; Donald Reid, "The Historian and the Judges", in *Radical History Review*, No. 80 (spring 2001), p. 135-148.
- 33 *Apud* Carlo Ginzburg, "Checking the Evidence: The Judge and the Historian", p. 91.
- 34 Erich Haberer, "History and Justice: Paradigms of the Prosecution of Nazi Crimes", in *Holocaust and Genocide Studies*, vol. 19, no. 3/2005, p. 487-519.

- 35 Erich Haberer, *op. cit.*; Donald Bloxham, "From Streicher to Sawoniuk: the Holocaust in the Courtroom", in Dan Stone (ed.), *op. cit.*, p. 397-419.
- 36 Zentrale Stelle der Landesjustizverwaltung zur Aufklärung nationalsozialistischer Verbrechen.
- 37 Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial*, Harvard University Press, Cambridge, 2005, p. 31.
- 38 About the Auschwitz trial, see *Ibidem*, as well as Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History, and the Limits of the Law*, Cambridge, Cambridge University Press, 2006.
- 39 Rebecca Wittmann, *op. cit.*, p. 3.
- 40 Deborah Lipstadt, *History on Trial. My Day in Court with David Irving*, Harper Collins Publishers, New York, 2005; D.D. Guttenplan, *The Holocaust on Trial*, W.W.Norton & Company, New York-London, 2001.
- 41 The British historian David Irving is a good speaker of German; he researched, for three decades, according to his own declarations, the German, British and American archives. He has never been the holder of a diploma (he attended, for several years, the courses of London University, but has never graduated), but it did not stop him from writing over 30 books on controversial historical topics. His notoriousness rose to such an extent that in the '80s-'90s he became an appreciated and well sold author (in the 1960s-1980s, David Irving published his books at successful publishing houses, including Penguin Books and Macmillan). He wrote biographies of the Nazi leaders and approached controversial war topics. He maintained that Hitler did not know, until the end of 1943, about the Jews' extermination, which was the result of his subordinates' anti-Semitism; he wrote that Winston Churchill would have ordered the assassination of the Polish General Władysław Sikorski or that the bombing of the German city of Dresda resulted in more victims than the figures circulated in historiography. Another book, *Uprising!*, labelled the Hungarian revolution of 1956 as an anti-Jewish revolution, given that the communist regime would have been directed by the Jews. He even opined about Anna Frank's diary saying that it was a fake. He wrote a book on the Nuremberg trial (David Irving, *Nuremberg: The Last Battle*, Focal Point Publications, London, 1999). He built his career availing himself of the courtrooms sometimes, looking for notoriousness by different actions brought against editors or authors that he accused of calumny. His legal problems appeared in the '80s, when he was arrested and expelled from Austria, with no right to enter Germany, Canada and Australia. He prided himself on the exhaustive study of archive documents and has always attacked the historians, on different occasions, saying that they would copy each other's books, while he was the only specialist in the Nazi regime that went right to the sources. However, Irving explicitly stated sometimes and implied many other times that not even his historical method is an infallible one, given that the selection of documents is a

- subjective choice. Generally, the critics who pronounced themselves on his works had quite diverse opinions. Some specialists praised him for the documentation and interpretation, others accused him of speculations, ill will or misunderstanding of the historical facts. His conclusions have always seemed to be on the edge between sensationalism and serious researches, being pretty often regarded as tendentious and irresponsible. Over time, specialists called the attention on the factual mistakes or the way in which sources were quoted (Richard Evans, *Lying about Hitler*, Basic Books, New York, 2001, p. XI-XIV, p. 1-39).
- 42 Deborah Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory*, New York: Plume, 1993.
- 43 Richard Evans, *Lying about Hitler*, ed. cit., p. 22-28, 35-37.
- 44 "Judgment in the case of David John Cadwell Irving and Penguin Books Limited & Deborah E. Lipstadt", Royal Courts of Justice, 12 April 2000.
- 45 Richard Evans, *Lying about Hitler*, ed. cit., p. 37.
- 46 War crimes were the subject of several documents and declarations of the officials of the allied governments in the period 1941-1943. The Anglo-American Declaration of 25 October 1941 was followed by the Soviet one (25 November 1941) and the one of 13 January 1942. At the beginning of the next year, in London, the allied government decided on the initiative to create an investigation commission for the identification of the war crime culprits.
- 47 Raul Hilberg, *Exterminarea evreilor din Europa*, vol. II, tranl. from French and English by Alexandru and Magdalena Boiangiu, Editura Hasefer, București, 1997, p. 175-217; Yves Ternon, *Statul criminal. Genocidurile secolului XX*, translated by Ovidiu Pecican, Liliana Popovici, Iuliana Doboși, edited and with a preface by Ovidiu Pecican, Editura Institutul European, Iași, 2002, p. 33-42. For the full text of the Declaration of London, see Michael R. Marrus, *The Nuremberg War Crimes Trial 1945-46. A Documentary History*, Bedford Books, Boston & New York, 1997, p. 51-57.
- 48 Telford Taylor, *Nuremberg and Vietnam: An American Tragedy*, Quadrangle Books, Chicago, 1970, p. 14.
- 49 Michael Marrus, "The Holocaust at Nuremberg", ed. cit.
- 50 Several titles in this field: Joe J. Heydecker, Johannes Leeb, *Le Procès de Nuremberg*, Buchet-Chastel-Correa, Paris, 1959 (last Romanian version: *Procesul de la Nürnberg*, transl. by Adela Motoc and Ileana Bărbat-Sgarbură, prefaced by Ioan Grigorescu, Editura Orizonturi, București, 2006); Eugene Davidson, *The Trial of the Germans: Nuremberg 1945-1946*, Macmillan, New York, 1966; Bradley F. Smith, *Reaching Judgement at Nuremberg*, Basic Books, New York, 1977; Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, Knopf, New York, 1992; Whitney R. Harris, *Tyranny on Trial: The Trial of the Major German War Criminals at the End of World War II at Nuremberg, Germany, 1945-1946*, Southern Methodist

- University Press, Dallas, 1999; Robert E. Cannot, *Justice at Nuremberg*, New York & Graff Publishers, New York, 2000; Lawrence Douglas, *The Memory of Judgement. Making Law and History in the Trials of the Holocaust*, Yale University Press, New Haven, London, 2001; Cristoph Burchard, "The Nuremberg Trial and Its Impact in Germany", in *Journal of International Criminal Justice*, 4/2006, p. 800-829; Eugene Davidson, Patricia Heberer, Jürgen Matthäus (eds.), *op. cit.*
- 51 Arieh J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment*, University of North Carolina Press, Chapel Hill and London, 1998, p. 107-110; Priscilla Dale Jones, "Trials of war criminals: general survey", in Israel Gutman (ed.), *Encyclopaedia of the Holocaust*, vol. 4, Macmillan Publishing Company, New York, 1989, p. 1489.
- 52 A few examples in this direction: Sheldon Glueck, *War Criminals, Their Prosecution and Punishment*, New York: Knopf, 1944; Donald R. Taft, "Punishment of War Criminals", in *American Sociological Review*, vol. 11, no. 4/1946, p. 439-444; Quincy Wright, "War Criminals", in *The American Journal of International Law*, vol. 39, no. 2/1945, p. 257-285.
- 53 Ilya Bourtman, "«Blood for Blood, Death for Death»: The Soviet Military Tribunal in Krasnodar, 1943", in *Holocaust and Genocide Studies*, vol. 22, no. 2, fall 2008, p. 245-265. See also *Procesul judiciar în afacerea bestialităților săvârșite de cotropitorii germano-fasciști și de complicitii lor pe teritoriul orașului Krasnodar și al ținutului Krasnodar în perioada ocupației lor temporare (14-17 iulie 1943)*, Editura în Limbi Străine, Moscova, 1943.
- 54 Donald Bloxham, *Genocide on Trial*, ed. cit., p. 3.
- 55 We mention here the trial of the personnel of Bergen-Belsen camp (October 7, in front of a British military court), the trial of the doctors accused of having killed, by lethal injections, 45 Poles and Russians (October 8), the trial of 40 persons accused of involvement in the thousands of murders at Dachau (November 16), the trial of 44 former SS members (11 of them received the capital punishment) for crimes at Bergen-Belsen and Auschwitz (November 17, in front of a British military court) (Richard Bessel, *Germany 1945: From War to Peace*, Simon & Schuster UK Ltd, 2009, p. 206-208; Giles MacDonogh, *After the Reich. The Brutal History of the Allied Occupation*, Basic Books, New York, 2007, p. 459-461).
- 56 For the whole debate at the end of the war on this issue, see the particularly interesting volume signed by Arieh J. Kochavi, *op. cit.*
- 57 The Americans and the British, together with the other exile governments, went on the variant United Nations War Crimes Commission, while the URSS preferred its own body, Soviet Extraordinary State Commission.
- 58 See Patricia Heberer, "The American Military Commission Trials of 1945", in Nathan Stoltzfus and Henry Friedlander, *Nazi Crimes and the Law*, Cambridge University Press, 2008, p. 43-45; Arieh J. Kochavi, *op. cit.*, p. 107.

- ⁵⁹ *Monitorul Oficial*, part I, yr. CXII, no. 219, vineri, 22 septembrie 1944, p. 6373.
- ⁶⁰ Radolph L. Braham, "The National Trials Relating to the Holocaust in Hungary", in *Lessons and Legacies IV. Reflections on Religion, Justice, Sexuality, and Genocide*, edited and with an introduction by Larry V. Thompson, Northwestern University Press, Evanston – Illinois, 2003, p. 130-131; Peter Kenez, *Hungary from the Nazis to the Soviets: The Establishment of the Communist Regime in Hungary, 1944–1948*, Cambridge University Press, New York, 2006, p. 142 (note 4).
- ⁶¹ George Ginsburgs, *Moscow's Road to Nuremberg. The Soviet Background to the Trial*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1996, p. 26.
- ⁶² One of the best contemporary historians, Tony Judt, posed these judicial dilemmas this way: "...all that newly re-constituted institutions of government must take upon themselves the task of punishing the guilty. Here the problems began. What was a 'collaborator'? With whom had they collaborated and to what end? Beyond straightforward cases of murder or theft, of what were collaborators' guilty? Someone had to pay for the suffering of the nation, but how was that suffering to be defined and who could be assigned responsibility for it? The shape of these conundrums varied from country to country but the general dilemma was a common one: there was no precedent for the European experience of the preceding six years" (Tony Judt, *Postwar: A History of Europe Since 1945*, Pimlico, London, 2007, p. 44).
- ⁶³ Lucrețiu Pătrășcanu, Romanian minister of Justice in 1945, regarded the old courts (especially the military ones) as "compromised". His opinion was shared by the Romanian political leader Iuliu Maniu, president of the National Peasant Party (in the context of the debates in the Council of Ministers on the Law for the purging of the State apparatus); the latter declared in the Executive meeting on 26 September 1944 that "This is the only way to do it now too [eliminating from the system those persons who had administered justice in the span 1938-1944, A.M. n.], because we cannot appoint judges those who are now brought to court. This is an absolutely impractical procedure" (Central Historical National Archives, collection Presidency of the Council of Ministers – Records, file 3/1945, f. 438-439; file 2/1944, f. 142).
- ⁶⁴ See István Deák, J. T. Gross, T. Judt (eds.), *op. cit.*, p. 25.
- ⁶⁵ Tony Judt, *op. cit.*, p. 58.
- ⁶⁶ "The Law-Decree no. 641 for the abrogation of the anti-Jewish legal measures" (*Monitorul Oficial*, yr. CXII – no. 294, 19 decembrie 1944, p. 8233-8239); "The Law-Decree no. 58 for the reinstatement of the Jewish chemists and the placing of the chemists who were refugees" (*Monitorul Oficial*, yr. CXII, no. 20, 26 ianuarie 1945, p. 502-504).

- ⁶⁷ CHNA, collection Ministry of the Interior – Miscellanea, file 29/1944, f. 19-39; *Monitorul Oficial*, part I, yr. CXII, no. 219, vineri, 22 septembrie 1944, p. 6373.
- ⁶⁸ Law no. 50 / 21 January 1945 for the identification and punishing of war criminals and profiteers; Law no. 51 / 21 January 1945 for the identification and punishing of war criminals and war profiteers; Law no. 312 / 24 April 1945 for the pursuing and punishing of the persons guilty for the country's disaster or for war crimes; Law no. 291 / 18 August 1947 for the identification and punishing of the culprits of war crimes or crimes against peace and humanity; Decree no. 207 / 20 August 1948 for the modification of articles 1, 2, 3 and 7 and the abrogation of article 12 of Law no. 291 / 18 August 1947 for the identification and punishing of the culprits of war crimes or crimes against peace and humanity.
- ⁶⁹ Law no. 535 / 12 July 1945 to amend article 14 in Law no. 312/1945; Law no. 647 / 14 August 1945 regarding the administration and liquidation of goods confiscated on the ground of Law no. 312/1945; Law no. 61 / 8 February 1946 to amend Law no. 312/1945; Law no. 455 / 22 June 1946 for the investigation and trying of offences under Law no. 312/1945; Law no. 599 / 3 August 1946 for the expansion of enforcement of Law 535/1945; Law no. 647 / August 1946 for the modification of Law no. 647/1945; Decree no. 6 / 23 April 1948 for the modification of art. 5 and 6 of Law no. 291/1947; Decree no. 39 / 27 May 1948, for the modification of art. 5 from Law 291/1947.
- ⁷⁰ The decree abrogated Law no. 291/1947 and Decree no. 207/1948.
- ⁷¹ The Decree also appeared in the sense of pardoning persons sentenced for political crimes (crimes against the State).
- ⁷² Buletinul Oficial al Marii Adunări Naționale a Republicii Populare Romîne, no. 27, 24 septembrie 1955, p. 261-262.
- ⁷³ Grigore Rîpeanu, "Imprescriptibilitatea infracțiunilor contra păcii și omenirii", in *Analele Universității București – Științe Juridice*, yr. XIX, no. 1/1970, p. 79-89.
- ⁷⁴ For instance, in Law no. 293/1945 for the reorganization of the Romanian Commission for the Enforcement of the Armistice, the enforcement of paragraph 14 (the arrest and trying of persons accused of war crimes) of the Armistice Convention was the task of the political group of the Commission, and not of the juridical one (*Monitorul Oficial*, yr. CXIII, no. 90, 18 aprilie 1945, p. 3211).
- ⁷⁵ Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends*, Princeton University Press, Princeton, New Jersey, 1961, p. 6.
- ⁷⁶ CHNA, collection Presidency of the Council of Ministers – records, file 3/1944, f. 134.
- ⁷⁷ Henry Rousso, *La collaboration*, MA Editions, Paris, 1997, p. 7-9.

- 78 The Law-Decree no. 18, “on the establishment of commissions for the provisory watch and selection of the members and sympathizers of the former Legionary Movement” (*Monitorul Oficial*, yr. CXIII, no. 8, 11 ianuarie 1945).
- 79 CHNA, collection Ministry of the Interior – Miscellanea, file 33/1943, vol I, f. 283, 298-299, ; vol. II, f. 6, 72, 75, 80-81, 109; collection Presidency of the Council of Ministers – the Military cabinet [Constantin] Sănătescu and [Nicoale] Rădescu, file 1429, f. 51-52; Ioan Chiper, Florin Constantiniu, Adrian Pop (eds.), *Sovietizarea României. Percepții anglo-americane (1944-1947)*, Editura Iconica, București, 1993, p. 105-106.
- 80 CHNA, collection Ministry of the Interior – Miscellanea, file 29/1944, f. 19-21, 28-39.
- 81 The journal of the Council of Minister by which the arrest of the first group of war criminals was decided, states (article 2) that the Government, by its decision, “ratifies all freedom depriving measures provisionally taken before 29 January 1945 against the persons mentioned in the present journal” (*Monitorul Oficial*, yr. CXIII, no. 38, 16 februarie 1945, p. 1105-1107).
- 82 CHNA, collection the Presidency of the Council of Ministers – Records, file 3/1944, f. 134.
- 83 *Ibidem*, collection Ministry of the Interior – Miscellanea, file 29/1944, f. 33; collection the Presidency of the Council of Ministers – Records, file 2/1944, f. 196-197.
- 84 *Ibidem*, collection Presidency of the Council of Ministers – the Military cabinet [Constantin] Sănătescu and [Nicoale] Rădescu, file 1429, f. 51-67.
- 85 *Ibidem*, collection Ministry of Justice – Judicial office, file 98/1944, f. 80.
- 86 Here is the argument that the Soviets offered to the Romanian Government for the arrest of Constantin Z.Vasiliu (Secretary of State in the Ministry of the Interior in the span January 1942 - August 1944): “The substitute of the minister of the Interior in Romania and chief of the Gendarmerie. Chief of the so-called Committee of trophies, which were stolen from the cultural institutions of the city of Odessa” (*Ibidem*, collection of the Presidency of the Council of Ministers – Records, file 5/1944, f. 64).
- 87 *Monitorul Oficial*, yr. CXII – no. 296, 14 noiembrie 1944, p. 8299 (included in Law no. 651 “for the punishment of the culprits of sabotage on the enforcement of the armistice convention”).
- 88 *Monitorul Oficial*, yr. CXII – no. 264, 14 noiembrie 1944, p. 7353.
- 89 Decision no. 60.580 / 20 December 1945 (*Monitorul Oficial*, yr. CXIV, no. 2, 2 ianuarie 1946, p. 14).
- 90 CHNA, collection Presidency of the Council of Ministers – Records, file 5/1944, f. 62-67.

- ⁹¹ Vladimir Tismăneanu, *Fantoma lui Gheorghiu-Dej*, preface by Mircea Mihăieș, transl. by Mircea Mihăieș, Alina Ghimpu, Ioana Ploșteanu, Diana Roțcu, Laura Sion, Editura Univers, București, 1995, p. 26-27.
- ⁹² Marin Bucur, “‘Eșurăția’ – purificarea politică a societății civile românești – clauză a armistițiului și pretext al declanșării terorii staliniste”, in *Revista istorică (de istorie)*, 1993, 4, no. 7-8, p. 677.
- ⁹³ CHNA, collection Presidency of the Council of Ministers – Records, file 2/1944, f. 148.
- ⁹⁴ *Ibidem*, file 5/1944, f. 71-72.
- ⁹⁵ *Ibidem*, f. 62, 67.
- ⁹⁶ *Ibidem*, file 3/1945, f. 321.
- ⁹⁷ Michael Mann, “Who are the Perpetrators of Genocide « Ordinary Men » or « Real Nazi »? Results from Fifteen Hundred Biographies”, in *Holocaust and Genocide Studies*, vol. 14, no. 3, 2000, p. 337-338.
- ⁹⁸ CHNA, collection Presidency of the Council of Ministers – Records, file 5/1944, f. 69, 71.
- ⁹⁹ Virgil Stănescu was born on 23 February 1903 at Văleni (county of Muscel, Romania). A Brigadier General, Stănescu held the function of sub-secretary of State for order and security with the Ministry of the Interior during the Constantin Sănătescu (II), Nicoale Rădescu and Petru Groza cabinets. He was replaced on 2 June 1945. In the 1946 elections, he run for and got a position of Deputy of Dâmbovița and Bucharest with the Block of Democratic Parties; in 1948 he occupies the position of secretary general of PNP (Gheorghe Crișan, *Piramida puterii: oameni politici și de stat, generali și ierarhi din România (23 august 1944-22 decembrie 1989)*, vol. I, argument by Gheorghe Buzatu, 2nd ed., revised and expanded, Editura Pro Historia, București, 2004, p. 329).
- ¹⁰⁰ CHNA, collection the Presidency of the Council of Ministers – Records, file 5/1944, f. 62, 67.
- ¹⁰¹ *Ibidem*, 68-69.
- ¹⁰² The Government held, in the span August 1944-November 1946 the legislative power as well, issuing law-decrees that were promulgated by being sanctioned by the Sovereign, as Decree 1627/1 September 1944 stipulated (*Monitorul Oficial*, yr. CXII – no. 202, 2 septembrie 1944, p. 6232).
- ¹⁰³ CHNA, collection the Presidency of the Council of Ministers – the Intelligence, file 47/1944, f. 77-87, 90, 93, 99, 101-105, 147-178, 201, 287-298; file 49/1944, f. 158, 162-164; file 52/1944, f. 88, 97, 105-106, 128, 131, 188; file 61/1944, f. 379-381.
- ¹⁰⁴ Alexander Victor Prusin, “Poland’s Nuremberg: The Seven Court Cases of the Supreme National Tribunal, 1946-1948”, in *Holocaust and Genocide Studies*, vol. 24, No. 1, 2010, p. 1-25.
- ¹⁰⁵ Radolph Braham, *op. cit.*, p. 131, 133.

- ¹⁰⁶ Benjamin Frommer, *National Cleansing. Retribution against Nazi Collaborators in Postwar Czechoslovakia*, Cambridge University Press, Cambridge, 2005, p. 3, 7.
- ¹⁰⁷ CHNA, collection the Presidency of the Council of Ministers – Records, file 1/1944, f. 6-9.
- ¹⁰⁸ *Ibidem*, collection Legislative Council, file 469/1944, f. 1-11.
- ¹⁰⁹ *Monitorul Oficial*, yr. CXIII, no. 109, 17 mai 1945, p. 3993.
- ¹¹⁰ *Monitorul Oficial*, yr. CXIII, no. 153-154, 10-11 iulie 1945, p. 5836, 5855.
- ¹¹¹ The Minister of Justice argued, at the time, for the necessity to establish several courts for the “purging to be as complete and quick as possible”. The court of Iași should have, most likely, tried the perpetrators of the pogrom of June 1941, and the court of Galați the authors of the massacre occurred there in June 1940 (Lucrețiu Pătrășcanu, *Scrieri, articole, cuvântări. 1944-1947*, Editura Politică, București, 1983, p. 77).
- ¹¹² *Monitorul Oficial*, part I, no. 189, 18 august 1947, p. 7423-7425.
- ¹¹³ Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *op. cit.*, p. 314.
- ¹¹⁴ CHNA, collection CC of RCP – Administrative-Political Department, file 5/1947, ff. 1-4. We are grateful to our colleague Mihai Burcea, who kindly made this document available for us.
- ¹¹⁵ *Ibidem*, collection the Presidency of the Council of Minister – Records, file 3/1944, f. 54, 91-92.
- ¹¹⁶ *Ibidem*, file 3/1945, f. 427-440 (Meeting of the Council of Ministers on 31 March 1945, during which the law-decree regarding the punishment of war crimes passed).
- ¹¹⁷ Peter H. Solomon, “Courts and Judges in Authoritarian Regimes”, in *World Politics*, volume 60, Number 1, October 2007, p. 125-126.
- ¹¹⁸ Lucrețiu Pătrășcanu, *op. cit.*, p. 76.
- ¹¹⁹ For the same topic, see also: *Comunicatul Comisiei Extraordinare de Stat pentru Stabilirea și Cercetarea Crimelor comise de Cotropitorii Germano-Fasciști*, Editura Partidului Comunist Român, București, 1945; *Procesul judiciar în afacerea bestialităților săvârșite de cotropitorii germano-fasciști și de complicitii lor pe teritoriul orașului Krasnodar și al ținutului Krasnodar*, ed. cit.; *Procesul bestialităților săvârșite de cotropitorii fasciști germani în orașul și regiunea Harcov, căzute sub vremelnică ocupație (15-18 decembrie 1943)*, Editura în Limbi Străine, Moscova, 1944.
- ¹²⁰ Kiril Feferman, “Soviet investigation of Nazi crimes in the USSR: documenting the Holocaust”, in *Journal of Genocide Research*, 5(4)/2003, p. 587-602.
- ¹²¹ Marina Sorokina, “Toward a History of the Investigation of Nazi Crimes in the USSR”, in *Kritika: Explorations in Russian and Eurasian History* 6, 4 (Fall 2005), p. 797-831.

- 122 See Arkadi Vaksberg, *The Prosecutor and the Prey: Vyshinsky and the 1930's Moscow Show Trials*, translated from Russian by Jan Butler, Weidenfield and Nicolson, London, 1990.
- 123 According to Burton Berry, Andrei Vyshinsky said, in his meeting with King Michael on 28 February 1945, that General Rădescu protects the fascists. A few days later, in another discussion between the American official and Vyshinsky, the latter emphasized that one of the new Cabinet's tasks was to "fight fascism" (Ioan Chiper, Florin Constantiniu, Adrian Pop, *Sovietizarea României*, ed. cit., p. 113, 118).
- 124 Marina Sorokina, *op. cit.*, p. 826-829.
- 125 Ilya Bourtnan, *op. cit.*, p. 253-254; Alexander Victor Prusin, "«Fascist Criminals to the Gallows!» The Holocaust and Soviet War Crimes Trials, December 1945-February 1946", in *Holocaust and Genocide Studies*, no. 17/2003, p. 15-16.
- 126 United States Holocaust Memorial Museum, Washington DC – hereafter called USHMM, RG-25.004M, Rola 20, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 8], f. 77.
- 127 *Monitorul Oficial*, yr. CXIII, no. 108, 16 mai 1945, p. 3958; no. 126, 6 iunie 1945, p. 4711.
- 128 CHNA, collection the Presidency of the Council of Ministers – Records, 3/1945, f. 427-440 (the meeting of the Council of Minister on 31 March 1945, during which the law-decree regarding the punishment of war crimes passed).
- 129 *Monitorul Oficial*, yr. CXIII, no. 101, 3 mai 1945, p. 3655; no. 109, 17 mai 1945, p. 3993; no. 155, 12 iulie 1945, p. 5921; yr. CXIV, no. 34, 9 februarie 1946, p. 991; no. 144, 25 iunie 1946, p. 6539; no. 145, 26 iunie 1946, p. 6585.
- 130 CHNA, collection CC of RCP – Administrative-Political Department, file 8/1947, f. 16-18. We are grateful to our colleague Mihai Burcea, who kindly made this document available for us.
- 131 CHNA, collection CC of RCP – Administrative-Political Department, file 73/1945, f. 5. We are grateful to our colleague Mihai Burcea, who kindly made this document available for us.
- 132 *Ibidem*, ff. 4-5, 7.
- 133 CHNA, collection CC of RCP – Administrative-Political Department, file 5/1947, f. 1-4.
- 134 *Monitorul Oficial*, yr. CXIII, no. 138, 21 iunie 1945, p. 5195.
- 135 The son of Adam and of Iulia (born Zierhoffer), Alexandru Voitinovici was born on 6 August 1915, at Pașcani, Romania. According to a caricaturist of the period, Godell, the future chief prosecutor of SRR was the son of a very famous confectioner in Iași who had his laboratory in Piața Unirii (for details, see Godell, *Viață de caricaturist: ziua vesel, noaptea vesel, nicicând trist...*, Editura Sirius, București, 1991). In 1933, Voitinovici graduated the High

school within the Pedagogical Seminary in Iași; in the span 1933-1937, he attended the courses of the Faculty of Law of the University of Iași, working as a lawyer, and one year after graduation he was admitted in the Bench as a judge, and, starting with 1942, as a prosecutor. In 1945, he was appointed chairman of the People's Tribunal in Bucharest. Gheorghe Zane, who was Al. Voitinovici's teacher at Iași, describes him in his memoirs as a hard-working young man, who did not welcome very enthusiastically the new dignity. His friendship with Lucrețiu Pătrășcanu in 1946 seems to have helped to his appointment as chairman of the People's Tribunal. Voitinovici lived, in 1945, in an apartment building in Piața Amzei in Bucharest (Gheorghe Zane, *Memorii: 1939-1974*, Editura Expert, no place indicated, 1997, p. 120). In the span 1947-1948, Voitinovici occupied different leading positions in the ministry of Foreign Affairs and in the Ministry of Justice. He was general prosecutor of Romania between 1948-1952, and then he was appointed (1953-1954) prime-deputy of the general prosecutor. The functions in the Bench went on, to the one of chairman of the Supreme Court (1954-1967) and president of the College of jurisdiction and of the public ministry with the Higher Court of Audit (1973-1977). Member of RCP and then of the Central Council of the Association of Jurists in the Socialist Republic of Romania, Voitinovici was awarded many decorations for his activity. Under the pseudonym of Al. Voitin, Voitinovici published different literary creations. At 19 (1934), he published the first volume of poetry, as well as articles in different magazines like *Lumea, Iașul, Cuvânt liber, Manifest, Clopotul, Adevărul literar și artistic*, etc. He participated at Iași, together with other intellectuals, in the circle and magazine meetings of *Însemnări ieșene* (1936-1940). It is from there, says Vasile Mârza, that he was later recruited in the party (CHNA, collection CC of RCP – Personnel, file M/1269, f. 136-137). In the '60s-'70s, he published several plays, among which the trilogy "Oamenii în luptă", "Procesul Horia", "Judecata focului", „Avram Iancu sau calvarul biruinței”, as well novels, volumes of poetry or memoirs. In the last years of his life he retired from public life, being marginalized by Ceaușescu's regime for his affiliation to Dej' guard. Alexandru Voitinovici died on 1/5[?] September 1986 (the obituary of the former chairman of the People's Tribunal in Bucharest was made by the Central Council of the Association of Jurists in the Socialist Republic of Romania, "Alexandru Voitinovici", in *Revista Română de Drept*, 1986; Mircea Duțu, *Istoria Înaltei Curți de Casație și Justiție*, Editura Economică, București, 2007, p. 422).

¹³⁶ CHNA, collection State Council, file 9/1955, f. 56-61. We are grateful to our colleague, Mihai Burcea, who kindly made this document available to us.

¹³⁷ Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *op. cit.*, p. 323, n. 8.

- 138 See, for instance, the case Oconel Cireș, former prime president of the High Court of Appeal and Justice and prime president of the Supreme Court (1 April 1945-20 September 1948), in the period, therefore, where were heard the appeals of the individuals sentenced by the People's Tribunals (*Ibidem*, file 9/1957, f. 453-456. We are grateful to our colleague, Mihai Burcea, who kindly made this document available to us).
- 139 CHNA, collection CC of RCP – Personnel, file R/73, f. 1-199. We are grateful to our colleague, Mihai Burcea, who kindly made this file available to us.
- 140 Erich Haberer, *op. cit.*, p. 493 (see also n. 24); USHMM, RG-25.004M, Roll 19, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 1], f. 21-21v.
- 141 Omer Bartov, "Seeking the Roots of Modern Genocide: On the Macro- and Microhistory of Mass Murder", in Robert Gellately, Ben Kiernan (eds.), *The Specter of Genocide. Mass Murder in Historical Perspective*, Cambridge University Press, 2003, p. 75-96.
- 142 Raul Hilberg, *op. cit.* vol. I, translation from French and English by Dina Georgescu, vol. II.
- 143 Dinu C. Giurescu, *Uzurpatorii. România: 6 martie 1945-7 ianuarie 1946*, Editura Vremea XXI, Bucharest, 2004, p. 233-234.
- 144 *Monitorul Oficial*, yr. CXIII, no. 155, 12 iulie 1945, p. 5910; yr. CXIV, no. 178, 3 august 1946, p. 8320.
- 145 *Monitorul Oficial*, part I, no. 189, 18 august 1947, p. 7423-7425.
- 146 CHNA, collection Presidency of the Council of Ministers – Records, file 6/1947, f. 9-14, 73-74.
- 147 Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *op. cit.*, p. 320.
- 148 CHNA, collection State Council – Decrees, file 7/1948, vol. I, f. 61-64. We are grateful to our colleague, Mihai Burcea, who kindly made this document available to us.
- 149 *Monitorul Oficial*, yr. CXII – no. 235, 11 octombrie 1944, p. 6580.
- 150 Alexandru Volanschi, "Noțiunea crimei de război în teoria și practica dreptului român" in *Justiția nouă*, no. 10, yr V, 1949, p. 1179-1190.
- 151 International Commission on the Holocaust in Romania, *op. cit.*, p. 324.
- 152 CHNA, collection Presidency of the Council of Ministers – Records, file 1/1944, f. 261-262.
- 153 *Ibidem*, file 1/1944, 2/1944, 3/1944, 5/1944, 1/1945, 2/1945, 3/1945, 4/1945, 5/1945, 6/1945, 7/1945, 12/1945, 13/1945, 1/1946, 5/1946, 10/1946, 6/1947, 9/1947, 10/1947, 12/1947.
- 154 Dinu C. Giurescu, *Uzurpatorii*, ed. cit., p. 238-239.
- 155 "Crime de război", in *Justiția nouă*, no. 9/1949, yr. V, p. 1037.
- 156 Details in Dinu C. Giurescu, *Uzurpatorii*, ed. cit., p. 247 (see also note 9).

- 157 Eleodor Focșeneanu, *Istoria constituțională a României (1859-1911)*, 2nd
edition, Editura Humanitas, București, 1998, p. 98.
- 158 About the punishment of wealth confiscation, the communist authorities
later stated that it represented a reparative penalty and not a complementary
punishment, being applicable even in the case of the defendant's death
("Crime de război", in *Justiția nouă*, no. 5/1950, yr. VI, p. 656; no. 9/1949,
yr. V, p. 1037-1038).
- 159 USHMM, RG-25.004M, Roll 20, Romanian Information Service-Bucharest
(SRI) records, [MAI, operative archives, file 40011, vol. 8], f. 76; Mircea
Duțu, "Cazul mareșalului Antonescu. Un proces legal, sub semnul
stării excepționale", in *Lumea*, no. 6/2009, p. 46-51; Traian Broșteanu,
"Constituționalitatea Legii pentru sancționarea criminalilor de război și a
vinovaților de dezastrul țării", in *Justiția nouă*, decembrie 1945, yr. I, no.
1, p. 21-26 (Broșteanu suggested that he himself would have written down
the rejection of the appeal made by the first group of war criminals).
- 160 Eleodor Focșeneanu, *op. cit.*, p. 93.
- 161 Cezar Mătă, "Comunizarea instituțiilor de stat și administrative în România:
1944-1947" in *Studii și materiale de istorie contemporană*, new series, vol.
II, 2003, p. 115.
- 162 CHNA, collection Presidency of the Council of Ministers – Records, file
3/1944, f. 135-145.
- 163 This problem was raised by the lawyers for the defence during the first
war criminals' trial too (the Macici group) at the People's Tribunal, on
14 May 1945, (USHMM, RG-25.004M, Roll 19, Romanian Information
Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 2],
f. 72).
- 164 *Ibidem*.
- 165 Traian Broșteanu, *op. cit.*, p. 21-26.
- 166 CHNA, collection Presidency of the Council of Ministers – Records, file
3/1944, f. 174-175; file 1/1945, f. 6.
- 167 Traian Broșteanu, *op. cit.*, p. 22; CHNA, collection Legislative Council, file
9/1945, f. 146.
- 168 CHNA, collection Legislative Council, file 15/1945, f. 4, 4v.
- 169 Decree no. 3 on 22 April 1948 for the abolishing of the Legislative
Council.
- 170 CHNA, collection Legislative Council, file 9/1945, f. 89.
- 171 At the ad-interim minister Dimitrie D. Negel's remark that the law on
the purge does not have the approval of the Legislative Council, Grigore
Niculescu-Buzești, the Foreign Affairs portfolio holder, casually replied:
"So what, we don't need it" (*Ibidem*, collection Presidency of the Council
of Ministers – Records, file 3/1944, f. 179-180).

- 172 Vasile Budrigă, "Aspecte din lupta pentru democratizare pe cale revoluționară a aparatului de stat local (primăriei, prefecturi) în perioada 23 august 1944-6 Martie 1945" in *Revista de istorie*, 1989, 42, no. 7, p. 657.
- 173 CHNA, collection Presidency of the Council of Ministers – Records, file 3/1944, f. 130-143; Dinu C. Giurescu, *op. cit.*, p. 251-252.
- 174 Keith Hitchins, *România: 1866-1947*, 2nd ed., Editura Humanitas, Bucharest, 1998, p. 506.
- 175 Gheorghe Onișoru, *Operațiunea Tămădău: desființarea Partidului Național Țărănescu (1947)*, with an introduction by Florin Constantiniu, Editura Institutului Național pentru Studiul Totalitarismului, București, 2008, p. 103.
- 176 Jeremy Rabkin, "Nuremberg Misremembered", in *SAIS Review*, 19.2 (1999), p. 81-96.
- 177 David Chuter, *War Crimes: Confronting Atrocity in the Modern World*, Lynne Rienner Publishers, London, 2003, p. 66-67. For other legality questions that were raised, see Arthur L. Goodhart, "The Legality of the Nuremberg Trials", in Guénaél Mettraux, *Perspectives on the Nuremberg Trial*, Oxford University Press, Oxford, 2008.
- 178 Tony Judt, *op. cit.*, p. 41-62; John H. Herz, "The Fiasco of Denazification in Germany", in *Political Science Quarterly*, vol. 63, no. 4/1948, p. 569-594.
- 179 Michael Shafir, " 'Nürnberg II?' Mitul denazificării și utilizarea acestuia în martirologia competitivă Holocaust-Gulag", in *Caietele Echinox. Vol 13: Gulag și Holocaust*, Cluj, 2007, p. 87-104, p. 87-104.
- 180 Eleodor Focșeneanu, *op. cit.*, p. 94.
- 181 Alesandru Dușu, Florica Dobre, *Drama generalilor români (1944-1964)*, ed. cit., p. 14; Idem, Alesandru Dușu, Florica Dobre, *Distrugea elitei militare sub regimul ocupației sovietice în România*, vol. I, ed. cit., p. 53-74 (Romanian Military Archives, collection Office of Military Justice, file 3712, f. 180-189); Mircea Dușu, "Cazul mareșalului Antonescu", art. cit., p. 49.
- 182 CHNA, collection Ministry of the Interior – General Inspectorate, Administrative Region IV Bucharest, file 235/1947, f. 80.
- 183 Alexandru Volanschi, *op. cit.*, p. 1190.
- 184 International Commission on the Holocaust in Romania, *op. cit.*, p. 319-320.
- 185 Radolph Braham, *op. cit.*, p. 134; Devin O. Pendas, "Seeking Justice, Finding Law", ed. cit., p. 354-355.
- 186 Ilya Bourtman, *op. cit.*, p. 262 (n. 8). See also the Soviet Decree of 19 April 1943, Karel C. Berkhoff, "Dina Pronicheva's Story of Surviving the Babi Yar Massacre: German, Jewish, Soviet, Russian, and Ukrainian Records", in Ray Brandon, Wendy Lower (eds.), *The Shoah in Ukraine. History, Testimony, Memorialization*, published in association with the United States Holocaust

- Memorial Museum, Indiana University Press, Bloomington and Indianapolis, 2010, p. 295.
- 187 CHNA, collection State Council – Decrees, file 516-559/1957, f. 47-57. We are grateful to our colleague, Mihai Burcea, who kindly made this document available to us.
- 188 Of the 117 persons who had received a definitive sentence, 23 received punishments between 5 and 10 years, 79 between 10 and 15 years and 15 over 15 years (Dumitru Lăcătușu, Alin Mureșan (eds.), *Casa terorii: documente privind penitenciarul Pitești (1947-1977)*, Editura Polirom, Iași, 2009, p. 377 (National Administration Penitentiary Archive, collection Secretariat, file 9/1957-1962, vol. III, inventory 1, f. 179)).
- 189 Jean Ancel, “Trials of war criminals: Romania”, in Israel Gutman (ed.), *op. cit.*, p. 1516-1518.
- 190 Devin O. Pendas, “Seeking Justice, Finding Law”, ed. cit., p. 357-364.
- 191 We refer here to the famous case “Four from Breda”, called after the name of the Dutch prison where they were imprisoned. Ferdinand Hugo aus der Fünten and Franz Fischer were the last Nazi war criminals who left the penitentiary of Breda in 1989.
- 192 CHNA, collection Presidency of the Council of Ministers – Records, file 1/1944, f. 266.
- 193 *Ibidem*, f. 267.
- 194 USHMM, RG-25.004M, Roll 19, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 1], f. 2-3v, 4-39.
- 195 See, in this direction, the booklet with an obvious propaganda purpose published at the time: *Poporul acuză. Actul de acuzare, rechizitoriile și replica acuzării în procesul primului lot de criminali de război*, Editura Apărării Patriotice, București, 1945 (the booklet was entirely reproduced in *Documents Concerning the Fate of Romanian Jewry during the Holocaust*, selected and edited by Dr. Jean Ancel, vol. VI (War Crimes Trials), The Beatle Klarsfeld Foundation, f.l., f.a., p. 57-113).
- 196 General Nicolae Macici, a brilliant product of the Romanian school of Infantry, was initially sentenced to death and subsequently to life in prison for having directed the reprisals at Odessa. Arrived the next day after the explosion of the Romanian military head quarters, he hastened the intensity of the reprisals (by hanging, shooting, burning), quickly reaching the amount of 25,000 dead persons. Macici expressed his discontent as for the measures taken until his arrival by General Constantin Trestioreanu in the evening of 22 October 1941, i.e. the hanging of a number of Jews and communists in the public markets: “you’re some cowards, some cravens; by this hour, Odessa should have been upside down” (USHMM, RG-25.004M, Roll 20, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 6], f. 161v). In the fall of 1944, Macici led Army I on the front of Hungary, fighting by the Soviets’ side, on the middle course of Tisza. The

- Soviet General I.M. Managarov (commandant of Army 53) congratulated him for feats of arms in Hungary. In World War I as well, Macici had stood out on the front, being awarded the Mihai Viteazul Order 3rd class for the success he had had with a company of machine-guns in the battles at Merișor and Vulcan, in September 1916. In April 1945, Macici was arrested, and one month later he was sentenced for war crimes (Alesandru Duțu, Florica Dobre, *Drama generalilor români (1944-1964)*, ed.cit., p. 166-172; Victor Nițu, *General de corp de armată Nicolae Macici*, access online at <http://www.worldwar2.ro/arr/?language=ro&article=94> (11 April 2010)). Details on the image of the General in Dinu C. Giurescu, *op. cit.*, p. 255-257; Gheorghe Vartic, "Generalul Nicolae Macici, un viteaz în «Memorialul durerii»" in *Revista de istorie militară*, 1995, no. 1, p. 36-39.
- 197 USHMM, RG-25.004M, Roll 20, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 6], f. 204.
- 198 *Monitorul Oficial*, yr. CXIII, no. 123, 2 iunie 1945, p. 4597.
- 199 Prime minister Petru Groza, in the meeting of the Council of Ministers on 2 May 1946: "We, as a Government, were forgiving, so to say, towards one group of war criminals, towards the first group. This cannot be regarded as a good thing or a bad thing in the perspective of the process of democracy. I myself am still thinking whether I was right or wrong to commute punishments. Generally, as a human being, one has the satisfaction of not having decided for anyone to die and from this standpoint my consciousness is clean. [...] I did not acquit anyone, I just commuted the punishment. I don't know whether I did a good or a bad thing. We will wait and see if this gesture of the government was appreciated as it was, or if it was interpreted as a sign of weakness, and if it resulted in any forms of strengthening or weakening democracy in our country. This is an open issue. I would not want to reckon it up already, as a negative result." (CHNA, collection Presidency of the Council of Ministers – Records, file 1/1944, f. 261; see also file 5/1946, f. 47-48; file 6/1947, f. 12).
- 200 About the Antonescu trial, many booklets, articles, documents and volumes were published. Several examples are: *Călăii în boxă! Ion și Mihai Antonescu în fața justiției Poporului. Demascarea trădătorilor. Cum a fost vândută țara. Textul complex al actului de acuzare*, Editura Institutului Român de Documentare, 1946; *Antonescu: Mareșalul României și războaiele de reîntregire*, ed. cit.; Gheorghe Buzatu (ed.), *România cu și fără Antonescu. Documente, studii, relatări și comentarii*, Editura Moldova, Iași, 1991, p. 331-339; Marcel Dumitru-Ciucă (ed.), *op. cit.*; International Commission on the Holocaust in Romania, *op. cit.*, p. 322-331; Dennis Deletant, *op. cit.*, p. 262-277. See also the particularly important volume of documents edited by Radu Ioanid (ed.), *Lotul Antonescu în ancheta SMERȘ, Moscova, 1944-1946: documente din arhiva FSB*, edition edited and prefaced by Radu

- Ioanid, translation of documents from Russian by Radu Părpăuță, Editura Polirom, Iași, 2006.
- 201 *Ibidem*, p. 320, 326-328.
- 202 Andreas Hillgruber, *Hitler, Regele Carol si mareșalul Antonescu: relațiile germano-române: (1938-1944)*, translated by Maria Alexe, 2nd ed., bio-bibliographic study by Stelian Neagoie, Editura Humanitas București, 2007, p. 36.
- 203 Răzvan Paul Bolintineanu, “Marina se împotrivește condamnării Mareșalului”, in *Revista de istorie militară*, 1995, no. 1, p. 54 (in the same direction, see Victor Bădescu’s account, in *Magazin istoric*, no. 12/1993).
- 204 Mircea Dușu, “Cazul mareșalului Antonescu”, ed. cit.
- 205 Another name, about which some ministers (among whom Petre Bejan, Minister of Industry and Commerce) expressed doubts as for his criminal quality was Ion Marinescu. Here is what Lucrețiu Pătrășcanu, minister of Justice, was saying: “We are talking about Ion Marinescu, who was minister all over Antonescu’s governing, starting with 29 May 1941 to 23 August 1944. He was minister of the National Economy, then minister of Justice, a man that has permanently sat on the ministerial bench, he signed the declaration of war against the USSR, he participated in the pro-Hitlerite policy to help the Germans. Each man, each criminal has his good acts in his life. In any criminal you will find a gesture of kindness and humanity. This does not mean that his good acts can exculpate his crimes.” In Dumitru Popescu’s case too (former Minister of the Interior under Antonescu) Pătrășcanu has the same reply, maintaining that he had participated in the decision-making, having held “political responsibility as a co-participant in Antonescu Government’s policies”. About the former minister of the Interior under Antonescu, Gorza admitted that he had played a small role, but he also stated that each Government member was responsible. Groza also stated: “*Sirs, I believe we are not objective enough. We send to court Genral Popescu, but we also send all Antonescu’s minister, with no exception, the ministers and the sub-secretaries of State, while some of them have guiltier consciousnesses*” (CHNA, collection Presidency of the Council of Ministers – Records, file 1/1944, f. 256, 262-263).
- 206 *Ibidem*, f. 206-207, 244-248.
- 207 *Ibidem*, file 1/1944, f. 206-268.
- 208 See, for instance, the account of confrontation between Gheorghe Grigorescu, former commandant of the sector of gendarmes in Berșad, and witness Niculae Neagoie (USHMM, RG-25.004M, Roll 29, Romanian Information Service-Bucharest (SRI) records, [MAI], operative archives, file 40013, vol. 3], f. 122).
- 209 With the exception of several booklets that were quickly withdrawn from circulation, the public did not have access to documents and accounts about

- the trials and their content. In 1947, a few issues of *România Liberă* tried to take some “images” from the unknown Transnistria.
- 210 Maria Bucur, *Heroes and Victims: Remembering War in Twentieth-Century Romania*, Indiana University Press, Bloomington and Indianapolis, 2009, p. 156.
- 211 USHMM, RG-25.004M, Roll 29, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40013, vol. 3], f. 130.
- 212 *Ibidem*, [MAI, operative archives, file 40011, vol. 5], f. 189v.
- 213 *Ibidem*, f. 194, 196.
- 214 See, for instance, Solomon Zalman’s declaration, lawyer, former president of the Community of the Jews in Dorohoi (*Ibidem*, f. 247-248v).
- 215 For instance, many witnesses remembered the murder of a local (Ukrainian Jew) near a given fountain that Gheorghe Grigorescu, former commandant of the sector of gendarmes in Berșad, used to walk around with the pistol in his hand, terrorizing the Jews (this accusation, like many others, was confirmed by the witnesses: Ghizela Roslich(?), Zaharia Halfiu, Roza Lasar(?), Zissu Schahter, Mates Bernhard(?), USHMM, RG-25.004M, Roll 29, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40013, vol. 3], f. 133-136v, 138 f, v).
- 216 Rebecca L. Golbert, “Holocaust Sites in Ukraine: Pechora and the Politics of Memorialization”, in *Holocaust and Genocide Studies*, vol. 18, No. 2, Fall 2004, p. 211/212.
- 217 USHMM, RG-25.004M, Roll 22, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 34], f. 5-5v
- 218 *Ibidem*, Roll 20, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 7], f. 205.
- 219 *Ibidem*, Rola 19, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 6], f. 6.
- 220 International Commission on the Holocaust in Romania, *op. cit.*, p. 387.
- 221 Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *op. cit.*, p. 311-325; CHNA, collection CC of RCP – Administrative-political department, file 5/1947, ff. 1-4.
- 222 CHNA, collection Presidency of the Council of Ministers – records, file 6/1947, f. 74; file 9/1947, f. 20-24, 50-53; file 10/1947, f. 26-29, 68; USHMM, RG-25.004M, Roll 30, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 21401, vol. 4], f. 54-55.
- 223 Andreea Andreescu, Lucian Năstase, Andreea Varga (eds.), *op. cit.*, p. 311-325.
- 224 There were cases when defendants confessed things they had not done. For instance, defendant Gefreiter Arno Düre in the Leningrad trial, confessed that he participated in the murder of the “Pole, Russian and Jewish officers” in the forest of Katyn. The “confessor” received only 15 years of forced labor, in exchange for his “comprising” declaration, the author suggests, escaping

- thus the capital punishment (Alexander Victor Prusin, “«Fascist Criminals to the Gallows!»”, ed. cit., p. 15, see also n. 74).
- 225 *Ibidem*, p. 1-30.
- 226 We have reached these intermediary conclusions after having studied several personal records of the war criminals: National Council for the Study of the Securitate Archives, Bucharest – hereafter called NCSA, collection Informative, file I 019569; I 252956; I 257205; I 257206; I 257207; I 257208, vol. 1-2; collection Criminal, file P 000241; P 013937, vol. 1, 2; file P 257207.
- 227 USHMM, RG-25.004M, Roll 22, Romanian Information Service-Bucharest (SRI) records, [MAI, operative archives, file 40011, vol. 34], f. 1-23.
- 228 “Crime de război”, in *Justiția nouă*, no. 2/1950, yr. IV, p. 261; no. 5-6/1949, yr. V, p. 629.
- 229 See, for instance, the cases of some former defendants of the “Macici goup”: Grigore Trepăduș, Gheorghe Zltescu, Romulus Ambruș (CHNA, collection State Council. Decrees, Decree 411/1964, positions 1680, 1648, 3159, in Dorin Dobrințu, Andrei Muraru (eds.), *Supraviețuitorii. Decretele de eliberare a deținuților politici din România (1962-1964)*, in manuscript).
- 230 Generally, the informative surveillance was ordered in the case of most of the individuals released after the decrees of the Council of State (ANCSA, collection Informative, file I 257208, vol. 2, f. 101). In the documents, the former war criminals were also called political prisoners, as they had been released in the mid-’50s, for political crimes (*Ibidem*).
- 231 The release of the political prisoners was decided in the early ‘60s, by the Romanian Communist Party, and enforced by the Council of State, who passed a series of decrees on the “pardon for the rest of penalty”. The decrees, issued in the span 1962-1964 include almost 20,000 names with complete identification data (last name, first name, date and place of birth, the name of the parents, the number, quantum and court who gave the sentence, the offence and the article in the Criminal Code), as well as the notes of substantiations. We cannot know yet the number of those who were sentenced for war crimes and released on the grounds of these decrees. Here are the numbers of the decrees: 1962 (Decree 3/1962; Decree 291/1962; Decree 293/1962; Decree 294/1962; Decree 295/1962; Decree 482/1962; Decree 772/1962); 1963 (Decree 5/1963; Decree 263/1963; Decree 322/1963; Decree 504/1963; Decree 505/1963; Decree 551/1963; Decree 696/1963; Decree 767/1963; Decree 768/1963); 1964 (Decree 176/1964; Decree 310/1964; Decree 411/1964); CHNA, collection Council of State; decrees in Dorin Dobrințu, Andrei Muraru (eds.), ed. cit.
- 232 We must state that not all the former convicted were reinstated (ANCSA, collection Informative, file I 257208, vol. 2, f. 75).

- 233 For instance, in the case of the first group of war criminals (the Macici group, 1945), the relationship between Constantin Trestioreanu and Stere Marinescu continued after release as well.
- 234 See, for instance, Dinu C. Giurescu (ed.), *Istoria Românilor. Vol. IX*, ed. cit., p. 569-570; *Procese '46 – Sentințe '49 – Recursuri*, art. cit.
- 235 Devin O. Pendas, "Seeking Justice, Finding Law", ed. cit., p. 355.
- 236 Donald Bloxham, "From Streicher to Sawoniuk: the Holocaust in the Courtroom", in Dan Stone (ed.), op. cit., p. 399.
- 237 Alexander Victor Prusin, "«Fascist Criminals to the Gallows!»", ed. cit., p. 11-15, 18-19.
- 238 Tanja Penter, "Collaboration on Trial: New Source Material on Soviet Postwar Trials against Collaborators", in *Slavic Review*, 64, no. 4, 2005, p. 782-790.
- 239 *Ibidem*.
- 240 Alexander Victor Prusin, "«Fascist Criminals to the Gallows!»", ed. cit., p. 15-21.
- 241 Christopher R. Browning, "German Killers. Orders from Above, Initiative from Below, and the Scope of Local Autonomy – The Case of Brest-Litovsk", in Idem, *Nazi Policy, Jewish Workers, German Killers*, Cambridge University Press: 2000, p. 116-118; Idem, "German Technocrats, Jewish Labor, and the Final Solution: A Reply to Götz Aly and Susanne Heim", in Idem, *The Path to Genocide: Essays on Launching the Final Solution*, Cambridge University Press, 1992, p. 72.
- 242 Nancy Wood, op. cit., p. 41-76.
- 243 Dennis Deletant, op. cit., p. 14.
- 244 International Commission on the Holocaust in Romania, op. cit., p. 325.
- 245 Tanja Penter, op. cit.
- 246 In the case of the two German states, the reactions, like the assimilation of the recent past were different. Although the debate on the manner and span in which took place this decisive transformation in the assuming of history is far from being ended, yet, the "democratization of memory" in Germany remains an important topic for the researchers of the Holocaust (Anthony D. Kauders, "Democratization as Cultural History: or, When Is (West) German Democracy Fulfilled", in *German History*, no. 25 (2007), p. 251-257; Annette Weinke, "The German-German Rivalry and the Prosecution of Nazi War Criminals During the Cold War, 1958-1965", in Nathan Stoltzfus and Henry Friedlander, ed. cit., p. 151-172).
- 247 Yehuda Bauer, *Rethinking the Holocaust*, Yale University Press, New Haven and London, 2002, p. 7.