Remembrance, History, and Justice

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The Romanian Revolution in Court:
What Narratives about 1989?

Introduction

Trials against former leaders of a dictatorial regime are symbolic moments in the founding of a new political order. Beyond the classic functions of criminal justice (punishing the guilty, preventing similar deeds in the future and reinforcing respect for the law), these trials can also play an epistemic role in societies in transition.\(^1\) They constitute important processes of narrative construction, understood as “storytelling” (*mise en récit*) about injustice. The selection of the relevant facts at the trial, their legal characterization, and the assignation of blame by sentencing may constitute public affirmations of an official and normative version of events,\(^2\) which implicitly grants legitimacy to the values of the new democratic society. The Nuremberg trials or Adolf Eichmann’s conviction in Jerusalem are high impact examples of the way in which criminal proceedings have modeled public awareness of mass murder.\(^3\) Theoreticians of transitional justice believe that such trials largely contribute to the forging of a common historical memory of the recent past.\(^4\)

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This vision has its origins in Durkheim’s theory of a collective consciousness of the values shared by the members of a society. Normally, the punishment and coercion contained in criminal law protect a set of values from whence they draw their strength, granting them a sacred aura.\(^5\) In this view, the criminal trial is a ritual for reaffirming the common values of society and strengthening the moral sentiment. Durkheim’s theory, however, is not heuristic for contemporary societies in transition, which often go through a radical refounding of their legal, political, and moral values. Thus, courts cannot restore symbolic unity in society by unilaterally putting certain values on show, but they can rather constitute a forum where various versions of the recent past confront each other.\(^6\) In transition trials, through the diverging testimonies and scenarios that are set out, a historical narrative can emerge, drawing a picture of the overturned regime, of its crimes and of its shared guilt.\(^7\) The verdict, in this view, signifies the validation of one or another of those versions of the recent past, as well as an expression of the identity of the new political regime. In Otto Kirchheimer’s words, those trials “allow building a permanent wall, without ambiguities, between the new beginnings and the old tyranny.”\(^8\)

The epistemic function of the trials does not, however, exhaust the historiographical experience. Historians such as Henry Rousso or Richard J. Evans have shown the serious limitations of the idea of “history written by courts.”\(^9\) Even though justice and history do function within the common horizon of truth finding, the very purpose of criminal trials is different. History seeks to explain, to grant intelligibility and coherence to events, while the judiciary seeks to apply justice, assign

\(^6\) Osiel, *Mass Atrocity*, 42.
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responsible and mete out punishment. Judges do not seek to find what “the whole truth” was, like historians would, but only the facts that support the charges, administrated as proof within the strict limits of the procedural codes. Justice tries individuals and individual causes, while history has a permanent opening toward the collective and institutional dimension of phenomena.\textsuperscript{10} As opposed to history, which is permanently being revised, narratives offered by courts “classify, finalize, condemn,” and thus offer an official and closed version of events, a “unique and definitive history.”\textsuperscript{11}

Another vulnerability of these narratives as potential creators of common historical memory is their possible exposure to political influence. Depending on the relationship between the new power holders and the past, as well as on their ideological vision, trials may be manipulated for purposes other than those specific to justice. Trials can thus become strategies for building political legitimacy for the new power, or acts of revenge disguised as legal procedures.\textsuperscript{12} Often times, the symbolic purpose of the trials, to “draw a line” between the old and the new regime, to mark a clean break and a new beginning, seems to be a “profoundly dishonest act,” given that societies in transition bear the scars of the institutional and cultural heritage of recent past. Such symbols and rituals of rupture may often serve to hide “guilty continuities” between the leaders of the old and the new regimes, and the solid ties that unite present and past.\textsuperscript{13} In addition, the trials can become political weapons for delegitimizing adversaries. To the extent that political aims gain precedence over the law and procedural guarantees, the epistemic function of the trials is compromised. The narrative risks becoming a form of propaganda, a political tool that acts in a Manichean and emotional manner.\textsuperscript{14}

\textsuperscript{12} Claus Offe, “Coming to Terms with Past Injustices,” \textit{Archives Européenes de Sociologie}, vol. 33, nr.1, 1992, 19.
\textsuperscript{13} Ibid., 18.
\textsuperscript{14} Rousso, \textit{Haunting Past}, 38.
In post-communist Romania, the transitional criminal justice was concerned almost exclusively\textsuperscript{15} with the crimes committed during the Revolution of December 1989.\textsuperscript{16} The importance of this event as a founding moment of the new political order, as well as the open violence of repression, rendered judicial silence impossible and imposed trials of the responsible parties as a necessity.

This study analyzes the epistemic role of the trials of communist leaders involved in repression against protests in December 1989. We will examine the narratives produced by these trials and the way in which they were built. The questions we try to answer are the following: How do these narratives contribute to clarifying the events and to building a common historical memory? What values have they reinforced? To what extent have these narratives been politically instrumented?

I. A Short Presentation of the Events of December 1989

The Romanian revolution broke out in the city of Timișoara on December 15–16,\textsuperscript{17} when ample protests against the regime occurred. On December 17, Nicolae Ceaușescu called a meeting of the CPEx (the Political Executive Committee, the equivalent of Politburo) of


\textsuperscript{16}Even if, referring to the fall of communism in Romania, the term “revolution” is contested by some analysts (see, for instance, Alex Mihai Stoenescu, \textit{Istoria Loviturilor de Stat din România}, vol. IV, Bucharest, Rao, 2004); we will be using it in this article to refer to the events that took place in Romania between December 16 and 22, 1989, which led to the change in political regime.

\textsuperscript{17}For the December 1989 events, see Peter Siani-Davies, \textit{The Romanian Revolution of December 1989} (Ithaca: Cornell University Press, 2005) (Roma-
the Communist Party of Romania (PCR), which decided to repress, militarily, the protests in Timișoara. The next day, Army troops—led by generals Victor Athanasie Stânculescu and Mihai Chițac, as well as Police (Miliția) and Securitate troops and conscripts, acting on orders from Minister of the Interior Tudor Postelnicu and the head of the Securitate, general Iulian Vlad, intervened violently, leaving dozens dead and hundreds injured and operating numerous arrests. Allegedly on Elena Ceaușescu’s personal order, forty bodies were illegally incinerated and disposed of, without informing the families.

On December 21, protests against the regime sprang up in other cities in Romania: Cluj, Brașov, Sibiu. In Bucharest, Nicolae Ceaușescu called for a popular rally of support for the Party. However, the mass of people brought in front of the Central Committee building started yelling slogans against the regime. The rally was stopped, but some of the participants regrouped in the center of the capital city, calling for the regime to be removed. That night, the authorities violently repressed the demonstrators, leaving forty-nine dead and 463 wounded. Similar state-engineered bloodshed happened in other Romanian cities.


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18 Sergiu Nicolaescu, *Cartea revoluției române din decembrie ’89* (Bucharest: Editura Ion Cristoiu, 1999), 122.

sion allowed the crowd to enter into Central Committee building, as Ceauşescu fled by helicopter.

At nightfall, gunshots were heard around the Central Committee building, quickly spreading over the entire city. This violence was attributed to “terrorists,” alleged fanatic supporters of Nicolae Ceauşescu’s regime. The Army took once again to the streets, and the people were given weapons in order to “defend the Revolution.” Starting on the night of December 22, the streets of Bucharest were the stage for a plethora of uncoordinated armed forces—Army, Securitate, Miliţia (police), armed civilians—who shot at each other, leaving hundreds dead and thousands injured. In that state of uncertainty and chaos, amplified by rumors spread by Romanian Television, most victims were the result of friendly fire and miscommunication. There was no functional coordination between various forces of public order, as units attacked each other, civilians confused soldiers for terrorists and the other way around.

On the evening of December 22, the creation of a provisional institution of power was announced: the National Salvation Front, made up mostly of former Communist Party leaders marginalized by Ceauşescu over the last two decades (such as Ion Iliescu, Silviu Brucan, Alexandru Bârlădeanu, Dumitru Mazilu and others). Several Army officers, including the generals Victor Athanasie Stănculescu and Mihai Chiţac, were included over the next few days in the new political structure.

Shootings continued in the city over the next few days, their intensity decreasing only after December 25, when the Romanian Television announced that the Ceauşescus had been trialed and executed. The tally of the violence was 1,104 dead and 3,352 wounded or which 162 were killed and 1,107 wounded before December 22, while the rest of the victims (the great majority: 942 dead and 2,245 wounded) came after that date. Exactly 543 people died in Bucharest, and 561 in the rest of the country. Investigations carried out between 1990 and

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20 Ibid., 187.
1994 indicated that the Army was responsible for 333 dead and 648 wounded, while the Securitate was responsible for 63 dead and 46 wounded. No responsible party has been identified for the rest of 708 dead and 2,658 wounded.\footnote{The Archive of Military Prosecutor Offices with the High Court of Cassation and Justice (AMPOHCCJ), unnumbered file, “Synthesis of Aspects Resulting from Investigations Carried Out by Military Prosecutors between 1990 and 1994 regarding the Events of December 1989,” 28–29.}

December 1989 is still a controversial historical topic. The pace and amplitude of the events, the role played by the Army in the repression and then in the fall of Nicolae Ceaușescu, the role of the nomenklatura in forming the new power structures, the violent chaos after December 22, as well as the so-called “terrorists,” who were never identified, have generated several hypotheses regarding the fall of communism in Romania. Three main types of scenarios can be discerned from narratives regarding December 1989: the “pure revolution” (accomplished through the spontaneous revolt of the population); the “coup d’etat” (organized by Soviet or Hungarian secret services); and, the “diversion” (organized after December 22 by the communist elites who took power, in order to consolidate their position).\footnote{For scenarios regarding the December 1989 events, see Ruxandra Cesereanu, Decembrie '89. Deconstrucția unei revoluții (Iași: Polirom, 2004).}

Beyond such synthetic evaluations, which hardly reflect any analytic consensus, the very reconstruction of the events and the assignment of responsibilities are in themselves problematic. Alongside historians and various official investigative committees, reconstructions and interpretations of events were provided by the trials of the communist leaders involved. Throughout the transition, hundreds of persons were investigated in such trials for crimes committed in December 1989.

II. December 1989 as “Genocidal Repression”

The transitional criminal justice in post-communist Romania started in December 1989 with the speedy trial and execution of Nicolae and Elena Ceaușescu on charges of “genocide” and “undermining state power.” By the end of 1990, six more political and military leaders
had been tried and convicted for “genocide.” These trials—character-
ized by spurious procedures and the building of charges based on an
amalgam of accusations that could not be proven and phantasmagori-
cal statements—officialized the narrative of “genocidal” repression in
December 1989 perpetrated both before and after December 22 by the
Securitate and “terrorists.” Bolstered by the trials, the “genocide” ver-

dion of events was borrowed in the public discourse by various political
and civic actors, who built their legitimacy and public identity around
the events of the Revolution.

On December 25, 1989, Nicolae and Elena Ceaușescu were exe-
cuted by a firing squad after a secret trial that lasted 55 minutes. The
trial was a mockery of juridical procedures and it ended with a sen-
tence that had been decided on before hand by the new political lead-
ers.24 The trial of the Ceaușescu couple was the “political trial”25 par
excellence, in which both the judge and the defense attorney acted as
accusers. The list of charges, only two pages long, accused the two
dictators, without specificity or proof, of “genocide,” “undermin-
ing state power,” “diversionary acts” and “undermining the national
economy.”26 Additionally, the accusations issued by the judge included
“starving the people” in the so-called rational nutrition programs, the
policy of systematic razing of villages, erecting “megalomaniac build-
ings,” embezzling the country’s riches, destroying the national culture,
as well as the “willful neglect” of supplying the Army forces with “war
technology worthy of modern times.” These policies were invoked as
evidence of a premeditated “genocide” of two decades, for “slowly but

24 Silviu Brucan, De la capitalism la socialism și retur. O biografie între două
revoiții (Bucharest: Nemira, 1998), 235.

25 By “political trials” we understand judicial procedures in defiance of cri-
minal law, with the purpose of issuing convictions that set an example and
serve a political agenda, based on uncertain accusations, not proven by
proper evidence. See Ron Christenson, Political Trials: Gordian Knots in the

26 The Archive of the Territorial Military Tribunal of Bucharest (ATMTB),
file no. 417/2003, Reconstruction of case file 1/1989 of the Bucharest
Exceptional Military Tribunal, “Indictment of December 24, 1989 of
the Bucharest Military Prosecutor Directorate.” The original file of the
Ceaușescu trial disappeared right after December 1989, and was reconsti-
tuted as late as 2003 based on copies recovered from various sources.
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surely destroying the Romanian people and national minorities.”

The court included, therefore, under the heading of “genocide,” charges that reflected state policies pursued throughout Ceaușescu’s rule, which involved an entire political and administrative apparatus. Such a legal interpretation was abusive. Irrespective of the brutality of the Ceaușescu regime, it was historically inappropriate and legally impossible to prove that the dictator intended to destroy the Romanian people.

Nicolae Ceaușescu was simultaneously accused for the bloody repression between December 16 and 22, 1989. “Thousands of dead” were mentioned as victims of the “genocide” ordered by the dictator in the main cities of Romania. Even though the minutes of the trial did not specify a number of victims, the judge claimed it was 64,000 dead and wounded. No written evidence was submitted, and no witnesses took the stand. These charges, considered by the court “notorious and incontestable activities, which do not need to be proven,” were characterized as “genocide” aiming at “the physical and psychological destruction of the entire community in our country.”

Invoking “genocide” for the events of December 1989 is in itself inadequate, in terms of both the Romanian criminal code and of relevant international conventions. The group affected by repression was a political group opposing the Ceaușescu regime, and not a “national, ethnic, racial or religious group” as mentioned in the legislation. Even though the number of victims in the Romanian revolution was considerable, invoking even a “partial destruction” of the “national group” would have been inappropriate, given that the entire nation had not taken to the streets.

The sentence states that the “genocide” of December had been prepared by recruiting and training “in secret military groups with high

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30 Neither art. 357 of the Romanian criminal code, nor the Convention on the Prevention and Punishment of the Crime of Genocide (UN Resolution 230 of 9 December 1948) include in their definition of genocide political groups, only national, ethnic, racial or religious groups.
quality military technology and training, to be used [by Ceaușescu] if needed against the Romanian people." The repression was attributed not to state institutions, but to "mercenary and terrorist forces" directly subordinated to Nicolae Ceaușescu. Trial documents did not mention the involvement of the Securitate or the Miliția. In the case of the Army, the court not only obscured its role in the repression, but presented it as a victim of the Ceaușescu regime: "Obsessed by a fear of the people, whom they hated, the two dictators, in parallel with dismantling the Romanian Army, which they did not trust, seeing it as the military arm of the people, deliberately neglected to supply it and robbed it of the possibility of training properly."\(^{31}\)

The trial of Nicolae and Elena Ceaușescu, therefore, produced a false narrative on the 1989 events, presenting them as a revolt of the entire nation against the dictatorship, followed by a "genocide" ordered by the two defendants and perpetrated not by state institutions, but by obscure forces, generically referred to as "terrorists." By its hasty character and the absence of any evidence, the trial missed the opportunity to clarify the chain of command of the repression, sweeping under the rug the responsibility of the upper Party hierarchy, as well as that of the Army and the Securitate.

The convictions for "genocide" continued throughout 1990. In January, four close associates of Nicolae Ceaușescu, among them the Minister of the Interior Tudor Postelnicu, and three members of the CPEx (Emil Bobu, Ion Dincă and Manea Mănescu)\(^{32}\) were accused of failing to oppose the dictator’s decision to violently repress the protests, as well as of directly coordinating the repression in various cities. The charges included killing and injuring "thousands of men and women, children and youth, adults and old people, of all social strata," with the "direct intention of destroying the community which peace-

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32 Tudor Postelnicu—Minister of the Interior and deputy member of the CPEx; Emil Bobu—secretary of the Central Committee of the CPR in charge of cadre and organizational issues and member of the CPEx Permanent Bureau; Ion Dincă—first deputy prime minister and deputy member of the CPEx Permanent Bureau; and Manea Mănescu—member of the CPEx Permanent Bureau.
fully called for the removal of the dictatorial system.”\textsuperscript{33} The evidence submitted were the minutes of the two CPEx sessions of December 17 and 22, 1989 as well as a transcript of a teleconference on December 21, in which the accused had taken no position toward Nicolae Ceaușescu’s intention of violently intervening against the protesters. The four were accused of having “participated in committing genocide by approving measures taken by the dictator, even though, in line with the prerogatives incurred by their positions, they had the possibility of preventing them.”\textsuperscript{34} Other charges were: orders given to Ministry of Interior troops, direct participation in the repression in Bucharest, Timișoara, Brașov and Sibiu, and involvement in “the theft of a large number of bodies, incinerating them and inscribing them on the list of fraudulent defectors.”\textsuperscript{35}

The charges did not cover, however, only the days preceding the flight of Ceaușescu, but also the violence from December 22 to 31, 1989. As in the case of the Ceaușescu trial, the panel of judges looked more like a punishment committee, barring the accused from speaking, declaring their guilt from the start, and invoking eccentric and baseless accusations alongside documentary evidence. One such example was the so-called “ZZ plan,” or “the end of all ends,” an alleged plan to poison water in the capital and destroy dams across the country in order to decimate the population of Romania.\textsuperscript{36} The coordination of “terrorist” troops after December 22 was also mentioned in the trial, the defendants being barred from expressing any opinion on this issue.

Since capital punishment was abolished early 1990, the four defendants were sentenced to life imprisonment for “genocide,” having their entire estates confiscated and being stripped of military rank. The same series of sentences also targeted General Iulian Vlad, head of the former Securitate, and general Andruța Ceaușescu, the dictator’s brother and head of the School of Military Officers of the Ministry of the Interior in Băneasa. The first was accused of ordering the repression deployed by the Securitate at a national level. The second was

\textsuperscript{34} Ibid., 5.
charged with coordinating Securitate regular troops in repressing the protests in Bucharest, as well as of killing protesters himself.\footnote{AMPOHCCJ, case file no. 81/P/1990, “List of charges of 17 July 1990,” 1–28, AMPOHCCJ, case file no. 65/P/1990, “List of charges of February 27, 1990,” 1–23. General Iulian Vlad was sentenced to nine years’ in prison and dishonorable discharge for complicity to genocide; Andruța Ceaușescu was sentenced to life in prison and dishonorable discharge for instigation to genocide and aggravated murder, see Domnița Ștefănescu, Cinci ani din istoria României, 156.}

These sentences continued to present the Revolution as genocidal repression. In contrast, with the Ceaușescu trial, where violence was blamed on forces extraneous to the Romanian state, the 1990 sentences pointed to the responsibility of the leadership of the Interior Ministry and the Securitate in the plight of the victims (those killed before the dictator’s flight from Bucharest). However, the trials did not indicate the exact manner in which the orders were carried out and by whom, which the press at the time presented as a failure of justice:

\begin{quote}
In our opinion, the charges were “thin,” and the “discretion” of the panel in finding out details which are essential in the perpetration of the genocide, inexplicable! . . . What exactly did Bobu do in the Martyr Town [Timișoara]? Whom did he order to shoot at the protesters, and who among them ordered the Securitate to do so? What are the names of the individuals who were ordered to organize the disappearance of the dead? Who knew of this plan, aside from him [Bobu] and Dăscălescu, who, under pressure from the masses, promised to return the dead to their families? All these questions still go unanswered. Did the prosecution fail to find a single witness, even in Timișoara? Or have they failed to even try to do so? . . . The cross-examination was designed in a way that prevents us from finding out anything.\footnote{Emil Munteanu “Sentința s-a pronunțat, întrebările persistă,” România Liberă, February 6, 1990.}
\end{quote}

The charges remained vague and imprecise, mixing facts, which could be proven (such as the order to shoot at the protesters), with fantasy scenarios (e.g., the plan ZZ or the coordination of unidentified “terrorist” troops). Extending the charges beyond December 22 insinuated...
ated an association between “terrorists” and Securitate troops, lending credibility to the scenario of their existence. These trials had the role of distorting history, not only by improperly accusing the defendants of “genocide,” but also by invoking imaginary facts with no real basis. The epistemic value of the trials was compromised by a willingness to pronounce exemplary sentences, which ran against finding out what the course of events was, and against their correct legal evaluation.

The Political Instrumentation of “Genocidal Repression”

The idea that there was a “genocide” in Romania in December 1989 was taken over by various political and civic actors. In Romanian society, the term genocide had a significant posterity during transition, being used generically to describe the repression in December, thus serving as a rhetorical weapon in the political competition.

On December 25, a communiqué from the National Salvation Front announcing the execution of the Ceaușescu couple for “genocide,” mentioned a death toll of 60,000 victims, a flagrant inadvertence, even though the actual documents of the trial did not report any figure. Cashing in on the general hostility of the population toward the old regime, the exaggeration of the amplitude of the repression reported by the new authorities and the evocation of “terrorists” and “genocide” against the nation had the role of securing public consensus over the execution of Nicolae Ceaușescu. It also granted legitimacy to the new power as adversary of the dictatorship and of the “generalized massacre” perpetrated by the ancient regime. Besides, the artisans of the process, like the president Ion Iliescu, justified the hasty execution of the dictator by evoking the military state of emergency, the need for national security and the need to stop the “terrorists,”


defined as Ceauşescu sympathizers: “It was first of all a matter of security. Because we were not sure that the two could not flee. The haste in which this trial was carried out was a measure taken precisely to limit suffering and loss of human life. There were still Ceauşescu sympathizers who wanted to grab power. And I think this decision was correct, because right after the execution, the violence stopped in the capital. It was a trial carried out under exceptional conditions, and I repeat: I don’t think it was a mistake.”

Silviu Brucan stressed the same idea: “The decision we made proved correct after the trial was televised. Most terrorists immediately surrendered.”

The “terrorists,” a veritable leitmotif of the 1989 moment, have never been identified and are still one of the great mysteries of events in December. Even though the National Salvation Front announced on December 26 that it had formed extraordinary military tribunals to prosecute “terrorist activities,” none has ever been tried. Of the hundreds of people who were arrested on suspicion of “terrorist activities,” only four have been brought to court for illegal possession of firearms. A report of the military prosecutor offices in 1994 claimed that many “suspects” were arrested either accidentally, as a result of misunderstandings, or by following unverified denunciations.

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41 Interview with Ion Iliescu by Raluca Grosescu, Bucharest, October 25, 2005.
42 Interview with Silviu Brucan by Raluca Grosescu, Bucharest, January 17, 2005.
44 Ibid., 249–251. The military prosecutors mention many such cases: a deaf-mute citizen was suspected of speaking foreign languages and immediately he was thought to be a terrorist. Some people were arrested only for having dark beards and complexions, being taken for Arab citizens (some rumors referred to terrorists as mercenaries recruited by Ceauşescu in the Middle East). Other people were accused only for being related to various Securitate officers or Party officials. Some people who were wounded were reported to the police as being under the influence of illegal drugs, and immediately detained as “terrorists.” Dozens of arrests, the report indicated, come from denunciation calls made by abandoned concubines who accused their former partners of being “terrorists.” There are even cases of people being reported as “terrorists” simply because they chased a bus or a tram, thus seeming “agitated and suspect.”
The invocation of this symbolic figure of the enemy legitimized the new political leaders as victors against the “foes of the Revolution” and as artisans of social pacification,\textsuperscript{45} which was endangered by the specter of “genocide.” In the first half of 1990, the press close to the NSF emphasized the identification of the Front with the Revolution itself, through its role in stopping the “genocide”: “The Front is the emanation of our Revolution, it is our blood, our hope, our sweat, our life. It is the people itself, since it made the Revolution happen, since it put a stop to the genocide.”\textsuperscript{46} This type of discourse is emblematic of NSF leaders, who continued as late as the 2000s to present the Front as savior of the people in December 1989: “The front finalized the Revolution. It created a political platform and secured peace in society, at a time when blood was flowing on the streets of Romanian cities.”\textsuperscript{47}

In this way, the narrative of the “genocide” in December, officialized with the execution of Nicolae and Elena Ceaușescu and the prosecution of their cronies, was instrumented by the representatives of the new power into a simple equation: NSF = Peace = the People. The latter rendered powerless, at least on short term, any criticism leveled at the Front for its continuity with the new regime.\textsuperscript{48}

The version of “genocidal repression” was also taken over by associations of victims of the Revolution, especially after 2004, when investigations into the December 1989 events were threatened by the statute of limitations,\textsuperscript{49} and the violence post-December 22 had still not been investigated. In 2004, an association of revolutionaries called 21 Decembrie filed a criminal suit against several political and military leaders, among whom former president Ion Iliescu, accusing them of “genocide” and “instigation to war”: “Aside from Stănculescu, who

\textsuperscript{46} \textit{Adevărul}, February 24, 1990.
\textsuperscript{47} Interview with Ioan Mircea Pașcu (politician, member and ideologist of the NSF and successor parties led by Ion Iliescu) by Raluca Grosescu, Bucharest, November 15, 2005.
\textsuperscript{48} Alexandru Gussi, \emph{Usages du passé}, 59.
\textsuperscript{49} Starting in 1991, the crimes of the revolution were mostly classified as murder or instigation to murder, crimes whose statute of limitations was 15 years. Therefore the investigation of these crimes was only possible before 2005. See Grosescu and Ursachi, \emph{Justiţia penală de tranziţie.}, 113.
has to be prosecuted for the genocide in Timișoara, after December 22, 1989, Ion Iliescu and his acolytes instigated to war against those who shouted “Down with communism.” It was a genocide against the entire people, instigation to war on a national level.”

In 2007, the legal action was filed again, and the president of the association Teodor Măriș said that there were witnesses willing to testify that Ion Iliescu, willfully and deliberately, took no measures to stop the violent chaos in the capital after December 22: “When Ion Iliescu returned from the Ministry of Defense, asked by the exasperated revolutionaries about the way in which bullets were flying everywhere on the night of 22–23 December, Iliescu answered: “Let them shoot, lads. We have to have some dead, that’s how revolutions are like.”

For the associations of the victims, the employment of the “genocide” accusation had a double role. On the one hand, this particular legal classification would have ensured that the crimes of the Revolution did not fall under the statute of limitations, and those responsible could be prosecuted at any time. This logic was also employed for the communist crimes committed before December 1989. As the Romanian criminal code provided a fifteen-year statute of limitation for homicide, while the crimes against humanity were not defined and punished, many former political prisoners and decommunization activists found in the “genocide” legal classification a possible, although misleading, solution for convicting human rights violations perpetrated before 1989, as the contributions by Iacob and Vasile point out in the present volume. On the other hand, this legal classification was clearly a weapon used against Ion Iliescu, in an equation robbing him of his revolutionary legitimacy: NSF/Ion Iliescu = instigation to war = enemy of the people. Lacking concrete proof, the suit filed by the association 21 Decembrie did not result in legal proceedings.

50 Interview with Teodor Măriș (President of the 21 Decembrie Association) by Raluca Grosescu, January 17, 2007.
52 By November 2011, the date this article was completed.
III. December 1989 as the Responsibility of the Party, Miliția and Securitate

In 1991, the prosecutions for “genocide” came to an end, in parallel with the normalization of the political situation and the consolidation of power by the NSF. A new stage of the transitional criminal justice, characterized by stricter observance of procedures and legal classification, started with the trials against many officials in the Communist Party, the Miliția, and the Securitate, as well as the revision of the sentences of “genocide” pronounced in 1990.

On June 4, 1990, 24 members of the CPEx were accused of “genocide.” The list of charges included “the destruction of human communities, consisting of the masses of revolutionaries” in December 1989. This accusation proposed an image of the repression as “planned massacre,” with the intent of destroying the entire population of the insurgent cities, to “raze to the ground” Timișoara and Bucharest. The evidence was based on the minutes of the two CPEx meetings of December 17 and 22, as well as on proof of personal involvement of some of the accused in coordinating repression in various cities of the country. Victims were not called to testify. No list of their names was drawn up as evidence.

During the trial, legal classifications were changed several times, proposing different narratives on the responsibility of the accused. The court abandoned from the start the charge of “genocide” stating for the first time that, after 1989, neither the Romanian criminal code nor the international conventions allowed the repression of a political group of protesters (the December 1989 protesters) to be classified as “genocide,” which definition only referred to ethnic, racial, religious or national groups.

In March 1991, the court decided that the CPEx meeting of December 17 was not politically relevant, since the decision to repress the protests in Timișoara was not made by statutory procedure, and that “the cowardly attitude toward the dictator could be condemned

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morally, but not legally.” Consequently, the responsibility for ordering the repression between December 17 and 21 belonged solely to Nicolae Ceaușescu, not the members of the CPEx. However, the CPEx meeting of December 22 was taken into consideration, the court arguing that, after the mass meeting of December 21 in Bucharest, it had become “evident” that there was, all over the country, a movement of solidarity with Timișoara. For the CPEx members who had attended that meeting, the court considered the charge of “aiding and abetting the criminal” Nicolae Ceaușescu. Also, the court considered the direct involvement of some of the defendants in the military operations in Timișoara, Târgu Mureș, and Cluj. In these cities there had been a large number of victims. But these actions were classified as “negligence in the line of duty” committed during “operations of restoring public order,” with no intention of violently repressing the protests.

Thus, the members of the CPEx who took part in the December 17 session and who had not coordinated operations in these cities were acquitted. The others were convicted for “aiding and abetting a criminal” and “negligence in the line of duty,” and given sentences of between two and five and a half years’ imprisonment.

This sentence created a different narrative about the Revolution than the one evoked in the previous trials. First, the charge of “genocide” was abandoned, even though the charge of “aiding and abetting” continued to make reference to “genocide” but perpetrated only by Nicolae Ceaușescu. The violence was no longer presented as willful repression against the entire nation, but as an “operation to restore public order” by the state authorities, which implicitly put into question the very legitimacy of the Revolution. Second, the role of the defendants in the repression was minimized. Invoking procedural matters, the court laid the responsibility of the military intervention from December 17 to 21 exclusively on Nicolae Ceaușescu, thus sweeping under the rug the role of the accused as decision makers in state policies. Interpreting the repression post-December 22 as simply “aiding

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55 Ibid.
56 For the sentences issued to the members of the CPEx see Grosescu and Ursachi, Justiția penală de tranziție, 139–143.
and abetting” or “negligence in the line of duty” gave the impression that the CPEEx members had no intention of using violence to repress the protesters.

After this sentence was appealed, the Military section of the Supreme Court of Justice decided, in December 1991, that even those charges were baseless, since there was no evidence to prove that the members of the CPEEx had decided “expressly or tacitly” the repression of the Revolution. As for the direct coordination of operations in the field, the court decided that the accused were there “in order to solve possible problems with supplies, and to provide public order and peace,” thus exonerating them completely. Another argument taken into consideration by the judges was the absence of precise lists of victims, and the lack of correlation between their death and orders issued by the accused. All defendants were acquitted. This sentence meant that, aside from Ceaușescu and his four close associates who had already been convicted, no Party dignitary was considered guilty of the repression in December 1989. The court ignored any political responsibility on the part of the CPEEx as a collective ruling body of the party-state, even though, according to the Constitution, it was the regime’s ruling body.

The sentence was, however, contested by extraordinary appeal in early 1992. The Prosecutor General of Romania underlined the decision-making position held by the members of the CPEEx and the ruling role played by the Communist Party. He proposed that the accused be prosecuted for first-degree murder and as accomplices. All the defendants received sentences between eight and sixteen years in prison. In 1993, the sentences for “genocide” given to the associates

58 Ibid., 39.
59 According to the criminal code, the appeal in cancellation was, until 2004 when it was annulled, an extraordinary means of appeal for the General Prosecutor or the Minister of Justice against definitive decisions. In criminal matters, the appeal could be made in first entry trials due to a wrong legal classification or for improper procedure in court.
of Ceaușescu were reviewed as instigation or complicity to first-degree murder.\footnote{For health or age reasons, many of the convicted were released before they carried out their sentences. Also, in 1994 and 1995 Ion Iliescu successively pardoned all the members of the CPEx who had been incarcerated, with no public justification for his decision. The last of the convicted were released from prison in September 1996.}

As opposed to the convictions in 1990, which excessively politicized the charges, in defiance of the law, the first two convictions in the CPEx trial showed that the judges once again obscured the political dimension of the crimes. They framed them within a purely technical narrative. Ignoring the political significance of the facts in transitional justice, they generated a situation in which these trials lost their epistemic function.

The flagrant discrepancy between the “genocide” prosecutions in 1990 and the acquittal of the CPEx members in late 1991 for the same actions demonstrated a lack of predictability of the act of justice. It also created confusion by advancing divergent narratives of the past. As Marc Osiel shows, if the judiciary is not predictable and if it does not treat similar cases in a similar manner, it compromises not only its narrative function and role in building collective memory, but justice itself.\footnote{Osiel, \textit{Mass Atrocity}, 136.}

The final conviction of the CPEx members in 1992 did however establish their responsibility for the repression before Ceaușescu fled. Reviewing the accusations of “genocide” and reclassifying their acts as murder did grant coherence to the Revolution trials and to the narratives they produced. The repression was presented as action against a political group, not against an entire nation, and the culpability was laid on the top-level Party hierarchy and the leadership of the Ministry of the Interior and the Securitate.

\textbf{Blaming the Ministry of the Interior and Exonerating the Army}

In parallel with the CPEx trial, Party leaders at the local level and many military men were put on trial. Between 1991 and 1994, during Ion Iliescu’s first presidential term, the trials were directed mainly at
the Party and the Ministry of the Interior (which included the Miliția and Securitate) cadres, as opposed to the small number of Ministry of Defense (Army) officers. Accusations were made only in relation to events before December 22, and only to violence outside Bucharest. No action was brought in relation to the victims in Bucharest. In relation to the victims in Timișoara, Sibiu, Cluj and other cities in Romania, 198 people were prosecuted.63

Numerous defendants were convicted for murder, such as secretaries of the Communist Party Central Committee or Party heads at the local level, as well as officials of the Securitate and Miliția in counties and cities where violence had occurred. In many instances, the cases were sent back to prosecutors, as judges deemed the investigations incomplete. Other defendants were found guilty only of “negligence in the line of duty” or “bodily harm inflicted with melee weapons.” Ion Iliescu granted amnesty to this type of acts by executive order in the first days of 1990, before any trial began.64 The decision, which was not publicly justified in any way, was interpreted by the victims of the Revolution as a form of tacit exoneration of some of those responsible for the repression. As in the CPEx case, some of those convicted immediately benefited from the presidential pardons. The number of convictions issued between 1991 and 1994 was nevertheless significant. Exactly 132 individuals were found guilty out of 198 individual trials.65

The military officers brought to court were less numerous and there were no convictions. In Timișoara, Cluj, Târgu Mureș, and Bucharest, the courts decided either to acquit, or to suspend procedures. In addition, until 1996, some military officers prosecuted for

65 Processing the information from 95 criminal cases results in the following statistic: of the 95 military men indicted, 51 received final sentences, 14 were acquitted, 12 cases were forwarded to the prosecutor’s office for final processing, while 18 defendants were amnestied by the decree issued on January 4, 1990. At the same time, five people who were convicted were pardoned by Ion Iliescu. See Grosescu and Ursachi, Justiția penală de tranziție, 163–164.
actions taken during the Revolution were promoted, some reaching the rank of general.

The exoneration of the Army and the assignation of blame on the Ministry of the Interior are proven by statistics linking the number of victims caused by the two institutions and the number of people prosecuted from each. In 1994, a report by the office of the Military Prosecutor offices revealed the following figures:66

<table>
<thead>
<tr>
<th>Ministry</th>
<th>Dead and wounded</th>
<th>Prosecuted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior Ministry (Miliția and Securitate)</td>
<td>63 dead,</td>
<td>92 officers</td>
</tr>
<tr>
<td></td>
<td>46 wounded</td>
<td></td>
</tr>
<tr>
<td>Ministry of National Defense (The Army)</td>
<td>333 dead,</td>
<td>19 officers</td>
</tr>
<tr>
<td></td>
<td>648 wounded</td>
<td>(+26 conscripts)</td>
</tr>
</tbody>
</table>

Statistics showing the number of victims caused by actions by the Interior Ministry and the Ministry of Defense and the number of people from those ministries who were prosecuted67

These trials also involved thirty-eight members of the central and local Party apparatus.68 Even though the Army was responsible for a much larger number of victims, as shown by investigations, Army officers were not convicted. The image that these trials created was that the bloody repression of the Revolution was almost exclusively the work of Miliția and Securitate troops. The Army appeared as backing the masses of revolutionaries. The lists of charges between 1991 and 1994 unanimously declared the “act of salvation,” which the Army had done in fraternizing with the people, sweeping its repressive role under the rug.

This image served the interests of the NSF, which had been associated with the Army, granting it the role of vanquisher of the dictatorship. “Victory in the Revolution” was attributed in public discourse to the NSF (self-described as “an emanation of the will of the people”) in

66 The figures refer to victims identified in criminal investigations. For the rest of 765 dead and 2,658 wounded in the revolution, the responsible parties are not mentioned.
68 Ibid., 36.
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...
evidence, no alternative explanation was offered for the violence continuing after December 22.

The exoneration of the Army in the 1990–1994 trials was perceived by the victims of the Revolution as a concealment of real responsibilities: “In the early 1990s, the trial in Timișoara put under accusation officers of the Miliția and Securitate, which was a form of justice, but most of the crimes were really committed by the Army. For us it was important that the investigations run further so it would be aimed at Army generals. Such crime at a national level was simply ignored through the decisions of military prosecutor offices across the country, by their failure to investigate generals and superior officers of the Army involved in the repression.”

In conclusion, the trials against the military before 1994 strengthened the narrative founded with the conviction of the CPEx members, according to which the only guilty parties were the leaders of the Party and of the Interior Ministry, described as partisans of the old regime. The Army, which caused the largest number of victims, was guaranteed impunity, thus securing the image of key institution in the “revolutionary victory.” After 1994, Revolution trials were interrupted, no important case was prosecuted, and public interest in this topic decreased.

IV. December 1989
and the Responsibility of the Army

The Revolution trials reopened after 1997, once the center right coalition The Democratic Convention of Romania (CDR) came to power. This process was part and parcel of the construction of a new narrative about the events in December. As opposed to the previous period, the trials proved the involvement of the Army in the repression, altering its image of “savior of the nation.”

The most emblematic trial of this phase was against generals Victor Athanasie Stănculescu and Mihai Chițac, who coordinated the repres-

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72 Interview with Traian Orban (President of the association Memorialul Victimelor Revoluției din Timișoara [Memorial for the Victims of the Revolution in Timișoara]), by Raluca Grosescu, Timișoara, January 15, 2007.

73 As part of the same case, general Stefan Gusa was also investigated, as head
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The trial was part of a wider series of prosecutions against Army officers, whose dossiers had been declared incomplete by courts in the early 1990s. Among these, the most significant was the prosecution of the officers responsible for the victims in Cluj. We will analyze the two trials to illustrate the change in the narrative about the Revolution, which had been officialized in previous convictions.

The case of the two generals sheds light on the complex nature of events in December, and the difficult legal problems facing courts, which had to prosecute them. As heads of the armed forces (Stănculescu ranked second in the military hierarchy after the Minister), the two generals executed, between December 17 and 19, the order to repress protests in Timișoara using military ammunition, which left 72 dead and 253 wounded. However, Stănculescu was also the one who ordered the troops on December 22 to go back to their barracks, thus allowing the protesters to enter the Central Committee building, which brought the Army on the side of the people. Both generals held ministerial positions in the first post-1989 governments formed by the NSF. In 1998, they were put on trial for “murder and instigation to commit first degree murder.” Class action was brought by 219 wounded people and heirs of those killed, and the material damages were to be paid by the two, together with the Ministry of National Defense.

The defense of the two generals mobilized arguments that were radically opposed to the discourse used in 1990–1994. The Army had presented itself as an unconditional supporter of the people against the tyranny. At their trial, however, the generals argued that the protests in December 1989 started against a “legitimate regime,” which it compelled by law to defend. “Recognized by the entire world, the leadership of the Romanian communist state could not become illegitimate from one day to the next,” said the Ministry of Defense attorney. If Stănculescu and Chitac emphasized back in 1990 the role they played in the victory of the

of the communist Joint Chiefs of Staff, and associate of the NSF after 1989, but died in 1994.

See Grosescu and Ursachi, Justiția penală de tranziție, 177.


Ibid., 187–188.
Revolution by showing solidarity with the protesters, that discourse had been replaced by a diametrically opposed one, convenient for the purpose of exoneration of responsibility in repressing the protesters.

Another argument of the defense was that, as Army officers, they only carried out orders given by Nicolae Ceaușescu, head of state and commander in chief of the armed forces. The trial thus opened another significant debate: the individual responsibility of military men when faced with an order from a superior officer. The Ministry invoked the "unconditional obligation" to carry out orders as being "a fundamental principle in the functioning of the Army." The generals "had neither the obligation, nor the freedom of having normative opinions, so that, depending on their conclusions, they could have acted in any other way than that dictated by the military code in force at that time." Military men "cannot be considered responsible for executing orders issued by the political power, and the entire responsibility falls on the latter," the Ministry of Defense claimed. Opposed to this position, prosecutor Dan Voinea explained that a military man has an obligation to evaluate the legality of an order, claiming that use of the Army against civilians to restore public order was illegal: "The duty to carry out orders should not be seen as an absolute. Executing an order is necessary, but within limits. It is specified in military codes that an illegal order should not get executed. Not every order has to be carried out. In 1989 many officers refused to fire."

The debate around the Army's actions was central in the proceedings of a trial in Cluj, where one of the defendants was General Iulian Topliceanu, head of the 4th Army Corps. This case was reopened in 1998 after the investigations had been terminated in 1992. The prosecution believed that the order given to the Army to intervene had been illegal, because, according to the Constitution and other laws, the Army "could under no circumstance be used in solving problems related to domestic order (with the exception of calamities and natural

78 Ibid., 260.
79 Ibid.
80 Interview with Dan Voinea by Raluca Grosescu, Bucarest, November 20, 2006.
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Domestic orders “were exclusively under the jurisdiction of the Miliția, Securitate troops, firefighters, border police and, to a very small extent, the patriotic guards.”

The court in Cluj ruled in 2003, five years from the trial’s beginning, when the political power had once again passed to Ion Iliescu’s party. The verdict stated that the prosecution, which had claimed that the December 1989 protests were a legitimate form of defense against a dictatorial regime, overstepped its authority. The court argued that the prosecutor’s office was not authorized to present the political context, but only to bring to the legal authority’s attention deeds that constitute crimes from a purely legal standpoint. Thus, right from the start, the judges considered that any political responsibility on the part of military leaders was irrelevant to the case. The court offered its own interpretation of the political context: since Romania functioned as a dictatorial regime and Nicolae Ceaușescu was “vested with unlimited authority,” General Topliceanu could not have resisted the order. Also in defense of the accused, the court contended that rumors during the days of the Revolution that “a foreign intervention in Romania was imminent” could create the “subjective representation” that it was the Army’s duty to intervene. Subsequently, “they are not to be blamed for the decision to take the military out in the streets,” but only for possible mistakes in coordinating military operations. As a result, the court decided to acquit some of the defendants and to reclassify the acts of General Topliceanu in such way as to fall under the statute of limitations and thus putting an end to the trial.

In the case of the two generals in Bucharest, the court did side with the prosecution. Generals Stănculescu and Chițac were sentenced, in July 1999, for instigating to first-degree murder. They were given fifteen years in jail and were stripped of their rank. Material damages owed to victims and their inheritors were granted to the amount of 36 billion ROL (over 10,000,000 Euros). These were to be paid by the two generals.

82 Ibid., 20.
84 Ibid., 39–40.
85 Ibid., 42.
86 AHCCJR, “Sentința nr. 9/15 July 1999.”
together with the Ministry of Defense. For the first time, an institution of the communist state was declared a responsible and ordered to pay reparations to the victims of repression.

The reaction of the Ministry was prompt. In 1999, Defense Minister Victor Babiuc (member of the Democratic Party, an offshoot of the NSF) claimed that by convicting the two generals and forcing damages on them, the entire Army would be declared guilty, denying its “savior” role in the events of December 1989. It was considered that such a trial constituted an attack against the “Army of the People,” essential part of the national being: “If two generals are considered responsible, then the entire Army is considered responsible.”87 This attitude showed how the democratic Ministry of Defense made common cause with the communist one. The Minister went so far as to call for amnesty for the events of December 1989: “If amnesty can secure national peace and stability, I am in agreement with such amnesty.”88

For prosecutor Dan Voinea, such arguments were but a way of eluding the truth and defend the criminals. He said that hiding the role played by the Army in the repression, far from creating an image of “heroes of the people,” it compromises it:

Saying that if two generals were guilty, the entire Army is guilty, Mr. Babiuc makes a great mistake, because he is discrediting a very important institution, the Army. The Army too has to be defended from criminals who may act under its aegis. We frequently find criminals in the Army, because the Army grants you power. And this power has to be measured, evaluated, controlled, and prosecuted every time it oversteps its legal bounds. Consider that in 1989 no Army unit was attacked by civilians. Therefore the Army was not acting in legitimate self-defense when it opened fire, because it was never attacked by civilians. Not only was it not attacked: civilians were shouting “The Army is with us!” The repression was unjust, and those who gave the order to open fire are guilty. The role of the Army is to defend civilians, not kill them.89

89  Interview with Dan Voinea, made by Raluca Grosescu, Bucharest, November 20, 2006.
The Party of Social Democracy in Romania (PDSR) led by Ion Iliescu, in the opposition at the time, took the side of the generals, claiming that the trial was political manipulation:

The PDSR is unsettled by the sentence issued by the Supreme Court of Justice, as well by the dangerous consequences created by this precedent. In our opinion, the SCJ ruling is not justified by the events in Timișoara, in December 1989, but by the wish of certain parties in the present coalition in power to rewrite history, including with help from the judicial system, and to confirm theses proffered for years, but which have no grounding in reality. . . . The PDSR considers demeaning this gesture made by some political people in power. They turned Justice into a servant of their interests, bringing grave offense to the Army in its entirety, and to the officer corps.  

After the PDSR returned to power in 2000, the conviction of the two generals was overturned on procedural grounds. In 2006, when center right parties won the general elections, Stănăculescu and Chițac were sentenced again to fifteen years in prison, the sentence being declared definitive in 2008. In the same electoral cycle, the trial in Cluj resumed, and it ended with the conviction of the defendants prosecuted in 2003. The Revolution trials continued to be systematically dependent on the political interests of various parties that switched power positions. As Dan Voinea pointed out: “Political interests determined the opening of these trials during right-wing governments. For similar reasons they closed during left-wing incumbents. The political factor influenced the continuation or termination of prosecution. Political influence was one of the main causes for which criminal prosecution on the Revolution and the crimes of communism were delayed. In 2000–2004, for instance, I was removed from all these cases. My files were taken away, with no given motivation. When the regime changed, I got my files back. Once again, a political decision.”

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90 Press release by the PDSR, quoted in *Jurnalul Național*, July 17, 1999.
91 Interview with Dan Voinea, made by Raluca Grosescu, Bucharest, November 20, 2006.
To summarize, the trials between 1997 and 2000 officialized the Army’s responsibility towards the victims of December 1989. For the first time, a sentence involved not only individuals, but also a state institution—the Ministry of Defense, which was declared responsible party and ordered to pay damages to the victims. The trials proved the importance of their narrative function because the proceedings established the course of specific events under scrutiny. The courtroom turned into an arena where various perspectives on the nature of the December 1989 moment clashed. Put in the position to justify the role played by the Army in the repression, its commanders radically shifted the discourse they advocated in the previous years. They play the card of the “illegal” nature of the protests. In contrast, the prosecution claimed that the protests against the regime were legitimate, and that the Army’s intervention was illegal. This would prove to be the final official version on the basis of the pronouncement of the verdict. Even though the act of justice was dependent on the political context, these trials proved that it was not just the Party, the Miliția, and the Securitate who were to blame. The Army shared of the blame for the victims from the days before Ceaușescu fled from Bucharest. These actions however did not have a major impact on the Army’s image in Romania society. Throughout the transition period, it continued to enjoy the population’s confidence, with popularity figures of over 60 to 70 percent. In 1997, 84 percent of Romanians fully trusted the Army, while, in September 1999, right after generals Stănculescu and Chițac were convicted, the percentage dropped to 65 percent.\(^2\)

The Revolution trials did not bring justice to all the victims of the period between December 17 and 22. The responsibility for the violence in Sibiu or Brașov, in December 21, has not yet been assigned. Furthermore, the repression in Bucharest between December 21 and 22 has not been mentioned at all in any trial. In several cases, the statute of limitations came into effect, which led to the discontinuation of legal action. After 1997, certain crimes, such as abuse of official position and second degree murder or assault, could no longer be punished.

V. December 1989 as the Result of Incompetence

Most of the Revolution trials were aimed at the repression that had been ordered before 22 December, even though there were many more victims past that date. A single major criminal trial focused on the events that happened after Ceaușescu fled: the case of fifty soldiers killed on the Bucharest Otopeni Airport on the night of December 22 to 23. The prosecution’s argument in this case is representative for the violent chaos that set in after December 22. The lawyers proved that the death toll was caused by the negligence of certain officers and the lack of operative coordination between the Ministry of Interior and the Ministry of Defense.

On the evening of December 22, while gunshots were making hundreds of victims in the capital, the chain of command in military operations had broken down and orders sent down the ladder through public radio and television. In this context, there were rumors that the Otopeni Airport was going to be attacked by forces loyal to the dictator. The commanders of Army and Securitate troops, without communicating between themselves, made parallel plans for defending the objective. Upon contact, Army and Securitate troops mistook each other for the expected attackers, and opened deadly fire.\(^{93}\) In 2001, the trial of the Army and Securitate commanders involved in the operation resulted in prison sentences between four and eight years, and payment of damages together with the Ministry of Defense.\(^{94}\)

This act of justice officialized the fact that military incompetence was one of the engines of violence, partially demolishing the theory of the “terrorist plot” after December 22. The idea was circulated as early as 1994 by military prosecutors, who pointed to the military’s lack of coordination, which resulted in an authority vacuum, confusion, or accidents. These were the main sources of the violence post-December 22.\(^{95}\) “The events in December caught the Army unprepared, painful


\(^{94}\) Ibid., “Decision nr. 1 of January 27, 2003 of the Supreme Court of Justice—Joint Sections,” 18–23.

as it is to admit . . . The vacuum of power within Army ranks . . . a polarization of authority between commanders of various branches of the armed forces . . . as well as some redundancies in exercising command functions were the background against which some nefarious sequences of events occurred, which unfortunately resulted in too many victims.”

This single trial, however, proved insufficient to get a clear image of the chaos produced after Nicolae Ceaușescu fled Bucharest. The absence of investigations and trials continued to leave room for the most diverse of theories, ranging from the involvement of obscure, “terrorist” forces to criminal political interests. For instance, throughout the transition, certain NSF leaders continued to talk about “terrorists,” which they identified as Securitate troops or “fanatic supporters of Ceaușescu.” In their turn, adversaries of the NSF accuse Ion Iliescu directly of the crimes perpetrated after December 22: “When Ion Iliescu understood that the protesters would never have a communist leading the country, he created this terrorist-Securitate diversion. This was instigation to war at a national scale. The population was given weapons to fight ghosts. They were talking about the glorious Romanian Army who fought the terrorists, just to realize later that the terrorists were their colleagues.” The image of the Romanian Revolution thus continues to be fragmented and incomplete.

Conclusions

Examining the epistemic dimension of the Romanian Revolution trials helped us identify the narratives they put in circulation about the events of December 1989, the values they promoted, and the extent to which they were used politically during the transition. The Romanian trials were built on four narratives about the nature of the Revo-

96 Ibid., 15.
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The revolution and its violent repression. First, convictions issued during the event’s immediate aftermath targeted the most visible figures of the regime. They presented the Revolution as a revolt of the entire nation and the repression against the protests as “genocide.” The incriminating facts were investigated poorly or were simply made up. Their legal basis could be found neither in Romanian nor in international law. The chain of command for the repression was not identified beyond Nicolae Ceaușescu and his close associates, thus giving the impression that their trials were smokescreens concealing real investigations of the hierarchical responsibility across the entire institutional apparatus. These trials did not contribute to clarifying the events, but they misrepresented them, subsequently distorting history.

The second narrative, created by the trials between 1990 and 1994, proposed an image of repression resulting almost exclusively from the decisions and actions of the Communist Party and the Ministry of the Interior. The repression was no longer characterized as “genocide” directed against the entire nation. The idea that pushed forward was that the Revolution meant the protest of a political group. The first two CPEx sentences, however, brought up the issue of the legitimacy of the demonstrations. Their repression was presented as a simple “operation for restoring order.” The acquittal of the accused was based on an interpretation of violence outside the political context. The leading role of the Communist Party in society was not taken into consideration. Nevertheless, the final conviction for “first degree murder” of CPEx members and many officials within the Ministry of the Interior clarified, from a legal standpoint, the events under investigation. The narrative that resulted was, however, fragmented. The selection of the accused almost exclusively from among the Miliția and the Securitate, as well as the exoneration of the Army in spite of the findings of criminal investigations, revealed how trials can build a history of events not only by describing facts, but also by selecting defendants.

The third narrative, created by the trials targeting Ministry of Defense officers (from 1997 onward), complemented the previous one by officially stating that the Army did bear responsibility for violence before Ceaușescu fled the capital. Even though the passage of time robbed them of much of their effectiveness, these trials generated important clarifications regarding the flow of events and the resulting guilt. For the first and only time in Romania, an institution of the communist
state (the Ministry of Defense) was declared responsible alongside its leaders, and it was ordered to pay damages to the victims of repression.

With all this progress made in clarifying the facts and in spite of the large number of defendants brought before the courts along the years, the 1989 Revolution still has not been entirely clarified after more than two decades. Even though trials have gradually reconstructed the chain of decision making for the repression, they also nurtured confusion by handing out different sentences for the same deeds and based on the same body of evidence. Such unpredictability in the act of justice, proposing diverging narratives from one trial to the next, or even as part of the same case, prevents the coalescing of a common historical memory. More than that, in some cases, intentional procrastination allowed the coming into effect of the statute of limitation, making further prosecution impossible. The trials concerning the repression in cities such as Brașov and Sibiu were thrown out of court for lack of evidence. No trial whatsoever was held in relation to the military operations of December 21 in Bucharest. Also, the nature of violence after December 22 remains unclear to this day. Aside from the “terrorist” theory invoked in the trials of 1990, only the Otopeni Airport case tried to fill in this information vacuum. The latter created a fourth narrative about the Romanian Revolution: the violent chaos after Nicolae Ceaușescu fled was caused by military incompetence. This lone trial regarding the post-December 22 victims is not sufficient to institute a coherent narrative that would supersede alternative narratives.

In addition to setting an official course of events, the Revolution trials also had a normative function, in the Durkheim understanding of affirming a fundamental set of new rules for a society. The first of these was the imagology of the Revolution, which was presented in several registers. Initially, the Revolution was identified with the nation itself. Its legal legitimacy was a direct expression of the popular will. The first trials affirmed this identity, which made any repression illegitimate and contravening to the interest of the country. The idea of socialist legitimacy was completely brushed aside. The repression was declared “genocide,” the supreme accusation of trying to destroy the entire nation, which could not have been planned by the Romanian state, but by deviant, “foreign” forces. This explains the need for scenarios such as that involving “terrorists” or the “plan ZZ” of poisoning the water. Even if these were mere fantasies born out of the fears of
the moment, such scenarios were necessary to support the idea that the Revolution was the will of the people, without accusing though the Romanian state of being an oppressor of the nation. The matter of the legality of the Revolution was brought up again in the subsequent trials, first in the CPEx trial. Then it was debated in court as argument in the defense of the Army. The Revolution appeared in these narratives either as “disturbance of public peace” by “hooligan elements,” or as a coup attempt devised by foreign agents. Both interpretations implied that the communist regime had been legitimate, “recognized by all countries of the world,” and that defending it had been obligatory. The convictions, in the end, validated the legitimacy of the December 1989 protest and the illegal nature of the military intervention against them. The verdict therefore reset the relationship between power and civil society: the Party and its coercive apparatus did not have the right to repress political protest. Civil disobedience in the face of abusive power was thus consecrated as a fundamental value of the new society.

The trials also raised the issue of personal responsibility in a dictatorial system. In transitional justice, the non-democratic nature of the regime and the impossibility of opposing orders are arguments frequently invoked by the defense. In Romania they were accepted by the judges in two important trials. Acquitting the CPEx members at an initial stage obscured the leading role of the Party as decision maker in the state, describing it rather as a powerless tool in the hands of the dictator. Also, at the trial in Cluj, the first verdict argued that Nicolae Ceaușescu had supreme powers in the state, which made any resistance futile. The final sentences in these cases, as in the trial of generals Stânculescu and Chițac, reaffirmed the legal obligation to evaluate the legality and consequences of an order before executing it. Even in a dictatorship, the courts said, the military or political hierarchy cannot exempt an individual from responsibility. Post-communist justice affirmed the precedence of the liberal values of individual responsibility and the right to question an illegal and immoral order, over values of unconditional obedience and organic solidarity around the institutions of the national state.

Finally, the examination of the narratives created by these trials allows us to evaluate their politicization as weapons for granting and removing legitimacy in election campaigns. The interpretations given to the 1989 moment were a key element in defining the identity of the
post-communist political and civic players. Public debates around the Revolution had a subsidiary role, namely that of stating or questioning the role which various actors held in the ancien régime or in its overturning.

The cycles of trials, with their various categories of defendants and incriminating evidence, corresponded to election years. Unsurprisingly, they provided grounds for political legitimacy to the various parties that succeeded each other in power. To this effect, the execution of the Ceaușescus, the conviction of CPEx members, and those of the leadership of the Securitate and Militia in the 1990–1994 trials, overlapped with the interest of the NSF in gaining legitimacy. The latter systematically tried in early 1990s to set itself apart from Ceaușescu’s elite. Simultaneously, the NSF’s association with the Army and its image of representative of the nation led to exemption of the Army from its responsibility during the December events. This is how it became important that the Revolution was presented in court as a victory of the Army and the repression as the exclusive responsibility of the Ministry of Interior. The amnesty declared by Ion Iliescu in January 1990, the systematic pardons and extraordinary appeals, which resulted in the overturning of so many convictions, showed the constant preoccupation on the part of the authorities with exonerating high military officials. The parties who branched from the original catch-all NSF continued to claim that the Army played an essential role in the victory of the Revolution. They contended that these 1997 trials, which emphasized its responsibility, were “political trials” and “offenses brought against the Army.”

At the same time, the trials held during the Democratic Convention’s administration officially spelled the responsibility of the Army for the repression. They proposed a narrative of events that directly weakened the revolutionary legitimacy of president Iliescu and the NSF, providing evidence for their complicity with the initiators of the violence. Their political enemies—not just center-right parties, but many civic organizations, associations of former political prisoners and associations of victims of the Revolution—used this narrative in the electoral struggle, showing the guilty continuities tying Romania’s present to its past.

The game of self-granted legitimacy continued in the election cycles that followed. The Revolution trials remained systematically
tributary to political interests. This often broke the continuity of the investigations and disrupted the possibility for their resolution in court by stopping or restarting them, by transferring the files from one Prosecutor General to the next. The verdicts also varied depending on who was holding political power at the moment of the judicial decision. All these dependencies bring into question the predictability of the act of justice, and, more fundamentally, its effectiveness in carrying out a narrative function about the past. Even though the trials did contribute to the gradual normalization of the historical discourse on the repressions of December 1989, their epistemic role was partially compromised by the influence of the political factor on justice. The instrumentation of “genocide,” the successive acquittals and convictions for the identical charges, as well as the absence of trials in relation to the events post- December 22 make it impossible even to this day to have public consensus on who bears responsibility for the victims of the Romanian revolution.