The Evolution of the Judicial System in Romania during the Past 60 Years

Horaţius Dumbravă,
Judge, Court of Appeal Mures
Member of the Senate of the National Union of Judges of Romania

Dragoş Călin,
Judge, Court of Appeal Bucharest,
Vice-President of the National Union of Judges of Romania

The reform of the judicial system is very difficult taking into account the judges from the communist period are mentained, whose vision of the rule of law is completely different from the Western one, and also the fact that the European Union underestimated this problem before the accession of the countries of Eastern Europe.

1. The period before 1990

Already troubled by a period of dictatorship before the takeover of the communist regime, judicial institutions and the rule of law suffered a decisive blow after the communist regime was established.

On a legislative level, this period occurred simultaneously with significant changes regarding legal principles and the role of justice in society. The rule of the law was quickly replaced by a policy of abuses and the independence of justice by its subordination to the political power.

The judicial system was changed in order to deprive the individual of any feeling of protection or potential support. New judges were appointed, while the whole judicial system became a tool of the regime.

The process of subordinating justice, which was one of the most important objectives of the new regime, started as soon as the communists took power. The courts were subordinated, one by one, first by the Law of 31 March 1945, concerning the trial of war criminals, stating that a judicial panel would consist of two professional judges and seven representatives of the people, and later by the Law of 24 November, on the organization of the judiciary, which extended the use of such judicial panels.

The work of revoking the independence of the courts was completed by an important filtering of the judicial corps, and by overturning the principle of irremovability, so that judges' careers were in the hands of the executive. Indeed, the text of the law clearly stated: "Judges must defend the interests of the working class, protect the new democracy and punish the enemies of the people."

Later, in 1948, all lawyers were excluded from the bar, and only those who had been approved by committees dominated by the communists were reappointed afterwards, which reduced their number to less than 20 percent of those practicing before the purge.

The process continued with the elaboration of the Constitution of 1948, followed by one in 1952 and another in 1964, with the modification of the criminal legislation from 1948 and of all the other main sources of law. All that legislation, rapidly instituted from the first years of the takeover, allowed the formation of terror as a state policy.

Judges from the interwar period educated abroad, especially in France and Italy, were replaced by workers and activists who had attended a school of law for six months. They carried out nationalizations of property, arrests, and imprisoned dissidents, especially with the help of the court. There were decisions which dictated capital punishment for those owning and not handing over quantities of gold supposedly intended to finance actions against the communist state—but without proof—or which confiscated the fortunes of those declared kulak.

In hundreds of cases the nationalization was abusive. The Decree-law of nationalization No. 92/1950 stipulated the possibility of challenging in court the act of nationalization, if the person

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whose building was taken didn't join the cases enumerated by the law. However, in case law such contestations were not admitted.

In the years 1980-1990, the law faculties were politicized, so that in order to be admitted it was compulsory to be member of the Organization of the Communist Youth. A healthy origin[168]—having parents who were workers or peasants—could be an advantage, not for being admitted to a faculty, but for being admitted to the magistracy.

In the homes where someone was punished, the sins of the parents were passed on to their children. Besides those cases, there was also a social criterion, ostensibly to rectify the inequality produced by former privileges, but in reality used to reward adhesion to the new regime and to close any future for those who were related to the past by a family tradition. The crime of the communist authorities was the fact that they blamed social origin, just like fascism had blamed ethnic origin.

With very few exceptions, judges and prosecutors were members of the Romanian Communist Party, while those who were not members—a very small number—were not allowed to be promoted. If a member of one's family settled abroad, their career was endangered and they could even be excluded from the magistracy.

In the magistracy, access was possible either by receiving a position when graduating—especially for the first in the class of graduates—or on political criteria.

Without the existence of private ownership, civil cases were very few, concerning family law litigations and lawsuits involving succession duties.

Concerning criminal cases, the procedural rights of the people were not observed, lawyers' activities were marginalized, and legal action on the basis of confessions obtained by violence was confirmed by the judges. The number of acquittals could be counted on one's fingers, and this was not due to the prosecutors' professionalism.

The only methods of association were the communist party organizations, many times common to judges and prosecutors.

In relation to the activity of trial courts, the communist party took care to assure the dependence of justice through the use of pertinent legislation. Judges never enjoyed irremovability, and the appointment of judges to the Supreme Court was done, according to the constitutional laws of the entire period, by the Great National Assembly, for a definite period of time. Thus, it was guaranteed that any judge of the Supreme Court would be careful to obey the regime, so as to make sure that his mandate which was limited in duration would be prolonged. Furthermore, in order to eliminate possible deviations, the Great National Assembly was the authority which checked the constitutionality of laws—laws which were in fact emitted by the assembly itself.

Until 1989, prosecutors took part—and effectively participated, despite being men—in the meetings of the medical commissions which decided if a woman could have an abortion. The conditions were extremely restrictive, and this was the reason why many women died from illegal abortions in deplorable conditions. There were also cases of girls dying when their appendicitis perforated, because the doctors thought they had caused an abortion and refused to operate upon them. Never could the doctors be convicted in such a case, but they could be convicted if they caused an abortion.

The public prosecutor's offices had a military hierarchy, strictly observing the principle of hierarchical subordination.

Judges made convictions ceaselessly on the grounds of Decree-law No. 306/1981 concerning

168 The intruders, whose access to education was blocked, were divided in three groups.
The first category: sons of industrial or agricultural workers, collectivist peasants or peasants having small or medium-sized households, sons of military men, engineers or technicians, clerks or pensioners, craftsmen and cooperative farmers.
The second category: sons of small traders or freelancers.
The third category: sons of kulaks, merchants or manufacturers, together with sons of war criminals, traitors, spies, saboteurs, fugitives abroad etc.

measures to prevent and control deeds which effected the good provisioning of the population, which incriminated—as an offence punishable by imprisonment, and often enforced—the gathering of corn cobs after the passing of the combine harvester and taking hold of them.

There was no corruption because nobody could do anything with money and because everyone was afraid.

The leading authorities of the party, consisting of activists who studied four years at normal school and the rest at evening class, had means of control and simply humiliated the judges whenever they could. The role of prosecuting also belonged to the executive.

Established in the middle of 1948, the Securitate secret police (and its special troops, directly aided by the communist police corp - Militia) represented the main instrument of communist repression against the Romanian people. The methods of imposing terror were many, starting with violent repression. Arrests, investigations, torture, the fixing of convictions were the norm, and courts, especially military courts, were practically the slaves of the Securitate. The Securitate's methods continued with psychological terror—organizing an extraordinary network of informers, developing a diabolical system of diversion and misinformation of the masses, threats, blackmail—and ended with pressuring the whole state apparatus, economic and administrative.

Consequently, in the period 1948-1989, the Romanian state was essentially based on terror, direct or indirect, punitive and/or preventive, while the purpose of the judiciary was to hide and justify the crimes committed by the totalitarian state.

2. The period 1990-2006

In the first years after 22 December 1989, the date marking the fall of Nicolae Ceausescu's dictatorship and the end of the communist regime, no debates took place in Romanian society regarding the place of justice or its role in society. Old mentalities inherited from the communist regime persisted for a significant period of time following the revolution.

Crowd collectivism functioned on its own, a collectivism which dictated the false egalitarian submission of the members of Romanian society to the commands of the central state leadership. Those who had a different opinion from that of the society were, like in the years of communism, marginalized.

Moreover, the first years after the events of 22 December 1989 were characterized by a lack of responsibility on the part of the individual, toward himself and toward society.

The years 1990-1991 were marked by conflicts involving miners who committed acts of violence against certain "declassed elements" of society. Those people were considered as such both by the miners, the rough and unconscious force of a recent and troubled past in the Romanian history, and by those who ruled Romania, most of them former privileged communist officials of second rank in the communist system. Moreover, the opinion of the collectivity—of the majority—was clearly favorable to the elimination of these "declassed elements" and openly approved the way in which the political power at that time resorted to violence during the events.

Actually, those "declassed elements" (the majority being students and intellectuals) didn't want anything but to cleanse Romanian society by eliminating from the leading structures of Romanian politics and the Romanian state's central institutions the people who had held decision-making power, even of second rank, in the communist apparatus, as well as those who collaborated with the Securitate.

It is not a coincidence that the events involving the miners got a favorable response from the majority of Romanians. Indeed, this may well have been because the communist structures of second rank functioned flawlessly and preserved their power, both during the events of 22 December and immediately after these events, and because the majority of Romanians were totally dependent on the state, on the monthly payments they received for their work.

The excessive centralization, the dominance of all levels of administrative decision, including the judiciary, by those who held power in the first years after December 1989 blocked for many years a true democratization of the post-communist Romanian state.

However, a Western democracy, as those who were in power after 1989 claimed to want, assumed the personal efforts of those who worked in the field of justice toward establishing a real system of justice anchored in the rule of law. At the same time, it also assumed the determination of those who held the centralized

power to restrain themselves and refrain from interfering in the judiciary's activities.

In reality, both those who worked in the field of justice (judges, prosecutors, auxiliary personnel) and those who were in power (mostly former privileged communist officials of second rank in the communist regime) were prisoners of a totalitarian outlook expressed in the organization and the functioning of the state.

The administrative centralization of decisions concerning Romanian justice (for instance, those of appointments for a position, appointments of the president of the court, budgetary decisions regarding the distribution of money needed for the functioning of the courts), left in the hands of the central administrative power (the Ministry of Justice), obscured the way of the Romanian system of justice towards its own independence.

Due to slow actions, immobility, and the perpetuation of the status quo from the period before 1989, the justice system in Romania did not change for two and a half years.

The Law No. 58/26 of December 1968, on to the judicial organization, and the Law No. 60/26 of December 1968, concerning to the organization and functioning of the magistracy of the Socialist Republic of Romania, represented the basis on which the Romanian system of justice continued to function.

Article 42 of that Government Decree stipulated that the president of the courts of justice, the judges of these courts, as well as the judges from the trial courts "are elected and dismissed by the district people's councils or, if it was the case, by the People's Council of Bucharest at the proposal of the Ministry of Justice."

Moreover, Article 47 stipulated that "the distribution of judges elected for trial courts, at the courts in the districts or in Bucharest […] was performed by the Minister of Justice," while Article 48 stipulated that leadership positions other than those stipulated by Article 42, such as court vice-presidents, presidents of sections, judges' inspectors at district courts of justice, as well as presidents and vice-presidents of trial courts, were appointed by the Ministry of Justice.

Obviously, objective criteria for promotion to superior courts or leading positions were not legally stipulated, so obedience to the executive power appeared to be the only criterion needed to be promoted to these positions.

In turn, the lack of independence in the administrative management of courts led to the mixing of interests of those who held leading positions in the system of justice (presidents and vice-presidents of courts) with those who held the central and local political power after December 1989.

Taking into account the fact that proposals to promote judges to superior courts were generally decided by the Minister of Justice at the proposal of the president of the court, there developed real cartels in justice created to support the interests of the presidents of the courts and of those who were politically in control of Romania in the first years after the revolution.

That is why there was only a slight interest, almost non-existent, in the functional notion of the independence of justice as the basis of a rule of law among those who composed the so-called judicial power.

On the other hand, the Public Ministry enjoyed the advantages conferred by the communist regime in the years of dictatorship—the prosecutors, together with the people from the former Securitate, being the main instruments by which the communists preserved their power.

In other words, if justice was just the slave of the interests of the central and local political power working hand in hand with the interests of the presidents of courts to perpetuate the administrative power, the magistracy represented, both in the communist regime and in the first two years after the events of December 1989, the political power itself. This is because the magistracy was invested in the first place with "the defense of the people's revolutionary conquering, of the social and state order" in "implementing the policy of the party and of the state."

As a matter of fact, the main instrument by which the prosecutors perpetuated their power in the Romanian post-communist society was by the possibility to place those people in preventive custody who they considered dangerous. However, the events involving the miners were greatly aided by the magistracy. Together with the forces repressing the people who demanded Romania's democratization during and immediately after these events, prosecutors arrested and started inquiries against those who protested quietly against the political power—a power which instituted itself immediately after 22 December 1989.

From this point of view, if judges were unable to fight for independence for the reasons mentioned above, the prosecutors did not want

to declare their possible independence because they were fully enjoying the advantages of the real power they held: the possibility to refer a case to court or to not refer a case to court, without any external control (especially without a judicial control). This was undoubtedly a terrible weapon of protection, used in concert with the ordering of preventive custody during criminal inquiries, and without judicial control.

According to the new Law of judicial organization adopted in August 1992, the courts of appeal were created as the second degree of jurisdiction. Thus, the authorities who held the power in the judicial system changed: because, administratively, the system of justice was centralized, the decision being only in the hands of the Minister of Justice, the president of the courts directed their obedience towards the central political power which was ruling.

In order to strengthen their power, the presidents of the courts brought into the system people with experience in different legal professions who had previously served the communist apparatus, and isolated the troublesome ones, the latter choosing a free profession, that of a lawyer, which gave them material satisfactions.

A novelty was represented by the integration of the prosecutors in the judicial authority.

A significant indication that the new law was not a definitive break with the past is the fact that the enactment of the Law No. 92/1992 was not preceded by an extensive debate among the magistrates, nor did the active elements of civil society (which were making their own way) express their opinions about the natural place of justice in society or in supporting the rule of law.

The new law stipulated two degrees of jurisdiction through the creation of the courts of appeal on a regional level, so that practically, almost unconsciously, a new reorganization of the authorities who had the power inside the judiciary was accomplished.

The creation of intermediate courts between the district ones (administrative-territorial structures with structures of local administrative power) and the Supreme Court in Romania (formally known as the Supreme Court of Justice) changed the ratio of forces between the executive local power at the local administrative level (the prefect's office, the district council and the local council of municipal towns), and the presidents of the courts.

The courts of appeal (15 in number) were provided with an extensive territorial competence, including two to four districts, so that neither the leading structures of the courts of appeal, nor the courts of justice, nor the trial courts, depended strictly on the interests of the local political power, but in the first place on the central executive power.

Through the appearance of the courts of appeal, and through the centralization of promotions and leadership appointments in the courts, with the purported aid of the Superior Council of Magistracy, those who led the courts directed their obedience towards the parliamentary politicians or the politicians who held leading positions in the central administrative apparatus (leaders of ministries, state secretaries etc.).

The excessive centralization of the judiciary's administrative apparatus in the hands of the executive power, including the budget of the courts, made political programs, such as the "fight against corruption" and the "independence of justice" high-minded language without practical consequences, since the political power, no matter its nature (left-oriented, right-oriented, coalitions of parties, etc.) combined its own interest with the interests of the presidents of courts.

As a matter of fact, each major political change (when a new political majority was elected, and a new government was appointed based on this new majority) caused the replacement of court presidents by the Minister of Justice, according to the legal mechanism presented above, and the maintenance of only those who proved that they were able to be obedient to the new politicians as well.

This is the reason why the presidents of the courts of appeal permanently sought to strengthen their position in the hierarchical system they were leading administratively. They owned and used very efficiently (excepting the situations when the political power interfered through its main spokesman, the Minister of Justice) several key instruments:

a) They marginalized inconvenient judges by forbidding them, for various reasons, to be promoted to functions at superior courts or in leading positions. The ones who were preferred to be promoted were the judges able to carry out blindly the commands and requests of the presidents of the courts of appeal, and through them, of the politicians. In fact, the politicians

decided to choose a free profession, that of a lawyer.

b) New people were brought into the system from other judicial professions (primarily legal counsels from the former state arbitrations), both to replace those who had left, as well as to fill vacancies in the system. (Through the creation of the courts of appeal, older judges occupied the positions in the courts of appeal, while the tribunals and especially the first instance courts were left with many vacancies, which had serious consequences for the effectiveness of solving cases.) This was a disputable basis of selection, because these people served the communist regime faithfully, their outlook being built on the administrative centralized structures of the communist system. On the other hand, these people built a faithful arm which was always ready to defend its benefactor, the president of the court who brought them into the system.

Another novelty in this period was the fact that the old magistracy was integrated constitutionally into the judicial authority, a constitutional entity which covered a wider range of institutions having attributions in the field of justice, such as the judicial courts, the Public Ministry and the Supreme Council of Magistracy.

It can be said that the methods used by the presidents of the courts to preserve power were also used successfully by the leaders of prosecutors' offices belonging to the Public Ministry. This was especially the case for prosecutors' offices belonging to the courts of appeal and the tribunals, as well as the military prosecutors' offices—where the interests of the politicians interfered with the interests specific to the leaders of the prosecutors' offices who wanted to maintain power inside the system.

The period between 2001 and the beginning of 2004 was the darkest period for the Romanian legal system from the standpoint of the independence of post-communist justice.

A new Minister of Justice was appointed by the political party which won the elections in the autumn of 2000. The activity of the new minister, Rodica Stănoiu, who is now suspected of collaboration with the old structures of the communist regime, and who is accused by the National Council for the Study of the Archives of the Securitate of carrying out the activities of the secret police, froze any progress on the way towards building up a real independence in the legal system or, for that matter, a self-perception of independence among judges.

The bondage of the judiciary knew many depraved levers of control during the mandate of Minister Rodica Stănoiu: from the dismissal of disagreeable court presidents and their replacement with presidents loyal to the political party in power, to the promotion of a draft bill aimed at greater executive control over the judiciary, to the adoption of laws such as the Code of Civil Procedure and other laws concerning the fight against the corruption which confused not only the functioning of the courts, but also the act of judging itself.

The negative culmination came at the end of 2003 through the beginning of 2004, during which time laws on the organization of the judiciary were adopted in secret. The provisions of these laws were clearly in favor of court presidents, on condition that these presidents continued to be appointed and dismissed by the Minister of Justice, and thereby stayed under the direct supervision of the ministry. Moreover, according to these new laws, the Minister of Justice would take over supervision of the entire budget of the judicial system, and thus of the budgets of the courts.

Happily, this dark chapter of the post-communist Romanian judiciary was able to be closed thanks to the joint efforts of some magistrates and the civil society organization Alliance for a European Justice in Romania (AJER).

The actions of this productive association were successful, and the Minister of Justice Rodica Stănoiu was obliged to resign at the beginning of 2004. Moreover, under the new minister, Monica Macovei, who was much more open to dialog, three new Laws of judicial organization were passed: Law 303/2004 concerning the statute of magistrates, Law 304/2004 concerning the organization of the judiciary, and Law 317/2004 concerning the Superior Council of Magistracy.

The appointment of Monica Macovei as Minister of Justice in December 2004, a person who apparently didn't have political support, meant a great hope for the reform of the judicial system. Minister Macovei functioned in this public office until the spring of 2007.

As a matter of fact, during the mandate of this minister, the judiciary was perceived as an independent one on the European level, and the fight against corruption was recognized as one which had finally begun in earnest, considering

the persons who were investigated and brought to justice by the part of the Public Ministry specialized in corruption offences. Moreover, the so-called "justice" chapter in Romania's negotiations with the European Union was improved significantly thanks to the efforts of Minister of Justice Monica Macovei, working together with civil society groups and a significant number of judges and prosecutors involved in the reform process.

At any rate, the dominant idea during the period between spring 2005 and spring 2007 was to crystallize a real independence, taking advantage of the successes of the new judicial organization Laws, as well as the new Minister of Justice who avoided any personal intervention, either official or underground, into the legal affairs of judges, prosecutors, or the Public Ministry.

The independence of justice, thanks to these efforts, is now one which is openly affirmed by courts and judges. This independence cannot be restricted, at least for the time being, particularly because of safeguards gained during this period. (The activity of the Superior Council of Magistracy in defense of the independence of justice reflects this tendency, as does the activity and actions of the professional associations of magistrates in civil society.)

For maintaining the system's independence and internally monitoring against its dysfunctions, the professional associations of magistrates have a particular and remarkable role. In Romania, there is not outlined a true judicial branch and therefore there is no class consciousness. Judges and prosecutors in Romania have not yet developed a vocational conscience and they are not yet aware of the necessity of taking part in actions designed to promote public interests in common with the interests of the guild. The main purposes are the defense of the judiciary's independence, an efficient enforcement of the law, and the assurance of high professional standards in the field.

Until 2004, it was forbidden for Romanian judges to take part in nongovernmental organizations, except in the form of professional organizations. As a consequence, their ideas were isolated from the public discourse, and that fact generated an inhibition towards being publicly involved. In fact, we can even talk about the existence of a confusion regarding the aim of professional associations, which usually address problems involving trade union matters, such as increasing wages, improving working conditions, or lessening the workload of magistrates.

One very inhibiting factor was the public reactions of the Ministers of Justice, as well as the reactions of chiefs of courts and prosecutor's offices (who were appointed at that time by the Minister of Justice), towards these professional organizations. Building a professional association which was ruled by another leader was considered a perturbation and a disruption to their own influence upon the system. Many times, the magistrates who were members of such professional associations were (or are, even now) considered as rebels, revolutionaries, etc. But it is beyond any reasonable doubt that without these sorts of "rebels" a lot of strange things in the Romanian judiciary would have never been pointed out.

In Romania there are several associations of magistrates, many of which have not distinguished themselves by any kind of activity, and others which have limited their activities to those of "trade union" demands.

The Association of Romanian Magistrates (AMR), founded in 1993, is the oldest association of magistrates in Romania. AMR declared itself at the very beginning as a successor to the former Association of Magistrates and Lawyers (AMA), which had functioned during the inter-war period. AMR is composed of judges (638) and prosecutors (414) as well.

AMR does not have a clear public message that could be easily identified by any dialogue partner or by the citizens. AMR has no strategy in developing public politics in the field of justice and has not declared a system of values in order to sustain or legitimate its public actions. AMR does not seem preoccupied with working out a plan related to the predictable evolution of the judicial system and the necessary changes of the system, owing to the need to cooperate with other European judicial systems.

Another regional association which has a very important professional activity is the Association of Magistrates from Iaşi (AMI). Considering its activities and interests, it can be said that this association is practically at the opposite pole from AMR, creating a very good impression by the number of professional projects it has developed. As an example, AMI developed an experimental program, "The court for minors

from Iasi." However, the association has no public positions concerning various issues of public interest related to the judiciary or the judge's role in society.

The Professional Association of Judges "Constantin Stătescu" – Târgovişte is an organization which brings together judges from the Dâmbovița District. At the end of June 2006 they organized the first "National Conference of Romanian Judges" (Târgovişte 2006), discussing important issues such as the role of the judges, the independence of justice, and uniform practices in the field of justice. It was the first sign which indicated the system's need to adjust the controls from the inside.

The Association of Magistrates from Timiş has developed local projects in order to estimate, for the first time in Romania, public trust in the judicial system. Also, they published brochures containing some minimum information for litigants. However, according to some official statements, the association has only two official members, though the association's data indicate that there are many more.

3. The period after 2007

After the accession of Romania into the European Union, and after the Ministry of Justice was taken over by a politician, an alarming cessation of the judicial reform in Romania has been noted—cessation grounded on the interests of politicians to subordinate the Public Ministry.

Given the progress towards judicial independence made under the leadership of Monica Macovei, the takeover of the Ministry of Justice by a politician in the spring of 2007 could have opened a new chapter of close cooperation between the political power and the Romanian judicial system (which, according to the Constitutional Law, includes three major component parts: courts and judges, the Public Ministry, and the Superior Council of Magistracy), in the direction of a productive and proper collaboration for the entire Romanian society.

Unfortunately, the mandate of the new minister, Tudor Chiuariu, began with a more than questionable attempt to discharge a Chief-Prosecutor at the specialized section of the Public Ministry set up to fight corruption offences, the D.N.A. - a body which carried out investigations of corruption concerning numerous politicians.

This scandalous affair, more extensive and more dangerous for justice in the whole than the particular case concerning the discharge of the chief prosecutor Doru Ţuluş from the D.N.A., has brought to light the unrestrained tendencies of Romanian politicians to subordinate justice, and at the same time, the ambiguous and hybrid state of the Public Ministry (a ministry without a portfolio, which is constitutionally subordinate to the Minister of Justice, but which has, according to judicial organization law, functional independence). Certainly, it follows in the next period for the Superior Council of Magistracy – the Section for Prosecutors, to pronounce whether this conflict with the chief of the D.N.A. was indeed an infringement on the independence of justice, and if it was, if it interfered in judicial affairs. But the public position of the Ministry of Justice throughout this period (including TV emissions showing a verbal altercation between the Minister of Justice and the chief of the D.N.A.) proved that Romanian politicians are not yet ready to accept a genuine rule of law in which the independent organization and functioning of the judiciary in all its components should be beyond any political actions or influence.

It is true that after these undesirable events, the Minister of Justice tempered his approach to the judiciary, but compared to his predecessor, he did not initiate any coherent program of continuing the reform of justice, though there remain many things to be done.

The absence of perspective on reforms in justice, as well as the undermining of the fight against corruption by attempting to subordinate prosecutors to the executive power, were clearly pointed out by the Report of the World Bank concerning its mission to verify the reform of justice in Romania, published 25 July 2007. The report recognized the absence of progress under the new Minister of Justice in the direction of justice reform, together with the alarming inefficiency in the same direction of the Superior Council of Magistracy.

In December 2007, Minister Chiuariu resigned, and the duties of interim minister were transferred to the Minister of Defense. In February 2008, Mr. Cătălin Predoiu was appointed as the new Minister of Justice. His promises were to continue and accelerate the reforms initiated by his predecessors in the direction of guaranteeing the independence of justice and ensuring the access of citizens to

justice, by improving the functioning of the judicial system, reforming the institutional framework, and accelerating the fight against corruption and organized crime.

Regarding the professional associations, the National Union of Romanian Judges (U.N.J.R.) was founded in May 2007. The stated goals of this organization of young judges are: the representation and defense of the professional interests of its associated members against other legal entities; the promotion of the liberty and dignity of the judicial profession; the strengthening of the independence of justice; increasing the effectiveness of justice; improving the image of the justice system; the creation of a unitary practice and the modernization of the justice system; the defense of the independence of the judiciary, both against the other powers of Government, and against the interests of individuals; and promoting respect in all circumstances for the judicial values of the rule of law, which recognize justice as a public service answering to the principle of transparency, and liable to the citizens.

U.N.J.R. is composed of the Association for the Defense of Rights and Independence of Judges from Oradea, the Association of Judges from Alba, and the Association Forum of Judges from Oltenia, as well as individual judges from the districts of the appeals courts, totaling about 300 members in all.

On 26 October 2007, the National Union of Romanian Judges became a member of the Association of European Magistrates for Democracy and Liberty (MEDEL), during the meeting of the Council Board held in Lübeck, Germany.

During the short period of time since its inception, U.N.J.R. has shown itself as very active in representing and defending the professional interests of its associated members against the Ministry of Justice, the Superior Council of Magistracy, and the Romanian President. The association has also organized three international conferences in Bucharest and Iasi on such subjects as the state of prosecutors in Europe and Romania, the fight against racial and ethnic discrimination, and relations between the media and justice.

4. Conclusions

The Romanian judiciary has passed through a long and circuitous evolution after the fall of the communist regime in December 1989. It has suffered multiple violations of its independence, from powers outside the system, and most grievously, from inside the structures of the system.

Generally, there is a problem with systemic transformations which do not occur radically, but gradually, with the preservation of the old elite. In such cases, the old elite is concerned primarily with keeping control, and does not have the interest nor the desire to reform the structures of the society. Thus, the debates concerning the new Constitution often neglects real changes that would guarantee the adequate functioning of a lawful state, in order to maintain the instruments of power in the hands of the old guard.

That was exactly what happened in Romania, where ex-communists took over the political power and guided the transition towards a new Constitutional, legal and economic system—a system designed to serve their interests.

Undoubtedly, the functional independence of the prosecutors remains to be discussed. But also in this case, the Romanian society should accept and should push the political class to adopt a legal framework, including a Constitutional one, through which the independence of the prosecutors will be recognized.

Further, another extremely difficult task regarding the reform of the justice system remains to be performed—the task of establishing a viable system for evaluating the performance of judges and prosecutors in achieving their legal functions. This task belongs to the system itself, meaning it is the responsibility of the Superior Council of Magistracy, the courts, and the judges themselves.

It is also necessary to remove all unqualified judges working in the judiciary and to create an environment in which the objective evaluation of courts and judges is a real one, with concrete results based on the actual performance of judges and prosecutors (i.e., their effectiveness in solving cases). This is necessary in order to strengthen the independence of justice, and also to strengthen the trust of Romanian society in the judicial system.

In any case, there now exists real hope that there is no turning back to totalitarianism or to those periods when justice answered the beck and call of the political power.

It is not only necessary to import the Western legislation, but also the idea of a working judicial system which operates according to the principles of the rule of law.