

Amnesty means oblivion: the politics of “pardon” in post-communist Romania¹

Ștefan-Sebastian Maftai

In 2001, under the initiative of Romania's President in office Ion Iliescu, a bill was proposed that polarised public opinion: the bill promised amnesty to those involved in the violent episodes of the 1989 Revolution, in the inter-ethnic conflicts of March 1990, which surfaced in the Transylvanian city of Țirgu Mureș or in the famous *mineriade* of 1990 and 1991, the so-called “miner riots”, events that took place in Bucharest, the country's capital, and damaged considerably the fragile display of democratic life emerging in the first two years of post-Communist rule.²

In January 1990, Romania's governing *National Salvation Front* announced that it will field candidates to compete in free multiparty elections to be held that April. Nationwide demonstrations against the Front were held. Approximately 20 000 people demonstrated against the regime in Bucharest. At the same time hoards of “counter-demonstrators”, including coal miners allegedly brought in by trucks, besieged the offices of opposition parties. On April 22 the same year, hundreds of student protesters erected a tent city in the University Square of Bucharest, calling for a delay in national elections and for the resignation of Interim President Iliescu. In June, after weeks of peaceful demonstrations in Bucharest, riot police ousted demonstrators and burned their tents. President Iliescu appealed to the “working class” to “save democracy” from “fascists”. Suddenly, almost 10 000 coal miners were allegedly brought in by trucks to “restore order” in Bucharest. It is still believed today that the miners were just an instrument for Iliescu's main plan of enforcing a mild post-totalitarian authoritarian regime in the first years after the collapse of Communism in Romania.

However, in 2001, at the time of the legislative proposal, Iliescu believed that the adhesion to the idea of “general amnesty” would mean that Romania would finally have the chance of stepping into “normality”, by leaving behind the residues of the past, which were thought of as “obstacles” in the way to “*national reconciliation*”. The press dismissed the idea.³

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² For the information cited below, see *Foreign Affairs* 70, 1 (1990/1991): 206-48.

³ See the harsh criticism of the proposal by the cultural media in: Mircea Mihaies, “Amnesty National”, *România literară* 24 (2001).

According to historian Adrian Cioflâncă,⁴ this initiative has been a strong example of blanket amnesty promoting impunity instead of encouraging responsibility, accountability, truth or political reconciliation. He actually criticized the 2001 initiative by claiming that this bill had four serious, critical flaws.

Firstly, this kind of measure would promote “amnesty without truth”, contending that “amnesty requires a rational forgetting, *i.e.* to know the truths and to store them in [an] orderly manner”. He also dismisses the initiators’ argument that this “amnesty law” would have a “South African precedent”, because “in the South African case the amnesty was theoretically granted instead of full confession” whereas “in the Romanian case, amnesty would mean the incineration of the past truths — not putting them in the middle ground”. Secondly, this amnesty law would be an “amnesty without perpetrators”, because “in order to *forget*, the Romanians have to know *whom* to forget”, in the sense that “in Romania, nobody established the culprits (with a few marginal exceptions)”. Thirdly, “blanket amnesty” would be an “amnesty without request”, because “amnesty doesn’t imply gratuitous forgetting”. In cases of amnesty, a “symbolical request” or a “*mea culpa*” would have to precede the amnesty. Otherwise this would be a form of “groundless oblivion”, risking an encouragement of “irresponsibility”. Fourthly, this kind of amnesty would eliminate any attempt at reconciliation; it would be “amnesty without reconciliation”, by not being the result of a “public pressure”, but only of a pressure “simulated by parliamentary means”.⁵

By voting in such a law, the Parliament would do nothing but restore the same “politics of oblivion”, which was also ubiquitous, in my opinion, in the political life before 1989. The author also sees that the “post-1989” political governments have not changed their policies very much in comparison to the former regime, preferring “politics of oblivion and forgiving to politics of remembering, restoring or disclosing the real past”.⁶ He also contends that the first post-Communist governments as well as the society itself as a whole were not so keen on openly debating or disclosing disturbing facts about the Communist past. It was actually more convenient to assume a “general tacit, *de facto*, amnesty” regarding those who were deemed responsible for crimes and abuses, an amnesty “which is the result of a pact of silence — an authentic *social contract* — concluded between politicians and citizens”.⁷ Furthermore, the politics of memory put into practice mainly under pressure from civil society (NGOs, the *intelligentsia*) or international

⁴ Adrian Cioflâncă, “Politics of Oblivion in Post-Communist Romania”, *Romanian Journal of Political Science* 2, 2 (2002): 85-93.

⁵ Cioflâncă, *Romanian Journal of Political Science*, 93.

⁶ *Ibid.* 88.

⁷ *Ibid.* 88.

organisations — comprising limited public access to political archives, partial disclosure of collaborationists, etc. — did not bring the expected results to Romania's public life. In fact, these kinds of policies, which were basically institutionally (governmentally or non-governmentally) implemented, *and not stemming from the general public's demand*, had a very limited effect on the social and political life of the everyday Romanian citizen. Only a small minority, representing a highly educated, relatively well-off class of citizens, were really interested and really *influenced* by these types of policies and debates. Actually, governmental, political and sometimes even cultural support of these active policies has been generally fragile and, moreover, often instrumental to political parties. Communist as well as post-Communist societies tolerated "politics of oblivion" under a false sense of security and under a chronic lack of democratic governance, democratic policies, democratic education and democratic exercise. Cioflâncă collects five explanations for the phenomenon of "oblivion": the sentiment of intense *nostalgia* for Communism; the sentiment of *shame* touching every person who not only collaborated with the regime but also participated in Ceaușescu's rituals of power; the sentiment of *guilt*, allegedly addressing to the Romanian's well-known cowardliness with respect to their tolerance of the system's abuses; the absence of decommunisation and the continuity of the Communist elite after 1989; finally, the *Leninist legacy*, which still influences the reading of the past through Communist paradigms. These explanations, which can also serve as instrumental excuses for interested parties, developed into a full-blown set of ideological theses showing immunity or resistance towards the democratic challenge of "disclosure".⁸

It is obvious that these techniques of resistance to disclosure (tacit amnesty) are part of a larger strategy, that of "de-responsibilisation", which has its own set of arguments.⁹ Paradoxically, de-responsibilisation was a post-Communist strategy for governments to gain a large popular audience: by giving the impression that the "people" were not responsible for supporting the Communist regime, a faked sense of "unity" is perfected. Thus, the Romanian "nation" has never been in support of tyrannical rule, it always played an "heroic" (*i.e.* tacit) resistance towards Communism. The real opposition to the Communist government was the lack of any opposition, which is finally deemed as noble or praiseworthy¹⁰. Symbolically, through this ritualistic exercise of "vacuuming" political responsibility, the whole Romanian "nation" is completely "amnestied", "absolved" or "pardoned". The granted "absolution", or disengagement from its responsibility for the past, as well as

⁸ The "theses" appear in: Cioflâncă, *Romanian Journal of Political Science*, 90-91.

⁹ See the description in: *Ibid.* 92-93.

¹⁰ Daniel Barbu, "Etica ortodoxă și 'spiritul' românesc" [The Orthodox Ethics and the Romanian "Spirit"], in: Daniel Barbu, ed., *Firea românilor* [The Romanian Way of Being], (Bucharest: Nemira Publishing House, 2000): 59-60.

society's uninterrupted refusal of political action as a *civil body* or civil society in post-Communist times sealed a so-called "social contract" between Romanian society and post-Communist governments. This kind of "contract" or "agreement" had also been persistent in Communist times as long as the political body of citizens had been left in a perfect, "tranquil" state of civic disengagement, "undisturbed" by political decisions. However, in modern political terminology this means that, by accepting from its government the symbolical ritual of "amnesty" *en masse*, this "nation" also accepts the blame or incriminates itself *en masse*. Drawing upon a famous statement by an ex-Minister of Defence on the occasion of a proposal regarding granting the Romanian Army indiscriminate amnesty for the crimes committed by some members of the Armed Forces during the Revolution, we may contend: "The honour of the 'nation' is not saved by amnesty, but by justice".¹¹

Iliescu's initiative to pass such a bill on "amnesty" was not an isolated event. In 1991, Ion Cristoiu, a well-known journalist, asked for a general amnesty for all the persons involved in the events of the Revolution.¹² Also in 1991, 23 members of the newly elected Parliament petitioned for a general amnesty related to the crimes committed during the Revolution. It is interesting that an amnesty for what happened during the Revolution of 1989 had more pleas than an amnesty for the crimes committed during 45 years of Communism. It's like the whole fate of Communism depended on the verdict about the responsibility of the perpetrators and the truth of the events surrounding that crucial moment of 1989. In time, "1989" began to carry the whole symbolic burden of Communism in Romania between 1945 and 1990. Sergiu Nicolaescu, a well-known film director during the Communist regime, connected to the regime's propaganda machine through his nationalist motion pictures and, afterwards, a close associate of the freely elected President Iliescu and also a member of his party and a senator after 1990, was the initiator of a Senate Commission to investigate the events of December 1989. In 1994, he suggested that a general amnesty should be given to all those who were in any way connected to those particular events. In 1998, after Iliescu's party stepped out of power, a somehow different approach to these matters was suggested by Constantin Dudu Ionescu, a member of the now anti-Communist opposition, and the interim Minister of Defence, who proposed the passing of a bill that should amnesty the crimes committed by Army officers in December 1989, with the *exception* of cases connected to criminal law. Dudu Ionescu had been encouraged in his

¹¹ When asked about the possibility of granting the Romanian Army general amnesty in relation to all the crimes committed during the Revolution of 1989 by some of its officers, Minister Gheorghe Tinca replied: "The honour of the Army is not saved by amnesty, but by justice", http://www.portalulrevolutiei.ro/arhiva/1998_184.html.

¹² Ion Cristoiu, "(Un moment ratat: Tribunalele revoluționare [A Wasted Moment: The Revolutionary Courts])", *Express Magazin* 26 (1991).

proposals by the President in office at that moment, Emil Constantinescu, the anti-Communist opposition leader. In fact, in his 1996 Presidential campaign, Constantinescu promised to encourage political initiatives that should advance the search for the “truth” of 1989, at the same time showing a commitment towards determining criminal law courts to finalise their investigations in the trials of Army officers, who had already been brought to trial for criminal offences committed during the last days of Ceaușescu’s regime.¹³ Even the opposition leaders didn’t realise finally that looking for “justice” in a traditional way, or simply seeking to punish political crimes with conventional methods and at the same time defending a philosophy of “justice” based on righteousness, will do nothing more than keep Romanians away from a “common” — or commonly oriented — “truth” and compel the alleged perpetrators to bury the “truth” with them and to find ways of escape.¹⁴ The outcome of the endless search for the “guilty” parties was the indefinite delay of the exercise of traditional justice, the stronger and stronger plea for a general blanket amnesty, the implicit surfacing of a policy of secrecy or oblivion, a somewhat expected tendency to put trust in different “theories” and “rumours” about the “real” events that took place or about the “real” perpetrators of these real crimes. All in all, despite the officialised version of the “truth” sanctioned by the first post-1989 presidency, a “tacit amnesty”, which still keeps Romanian society divided, confused, and after all silent in its own private, quiet way of everyone on every street corner having his or her own “opinion” (*i.e.* “truth”) about the past. We know now, 20 years later, that the trials of the Army officers lasted for up to 18 years, with impossible delays and with very few tangible results.¹⁵ Almost all of the *Securitate* and Army officers who were indicted were acquitted or received blanket amnesty or a Presidential pardon.¹⁶ Those who were not tried are still among us, carrying their “truth” and taking their “righteousness” to their graves. The first post-Communist decade witnessed a frenzy of heavily publicised indictments and criminal trials without any considerable results. These indictments did nothing more than to polarise the public opinion with respect to the legitimacy of the trials themselves. Also, these trials spawned a

¹³ Claudiu Săftoiu, “Armata Română, față în față cu morșii revoluției” [The Romanian Army, faced with the dead of the Revolution]: http://www.portalulrevolutiei.ro/arhiva/1998_184.html.

¹⁴ See the discussion on political “truth” as related to transitional justice in: Philippe-Joseph Salazar, Sanya Osha, Wim van Binsbergen, eds., “Truth in politics. Rhetorical approaches to democratic deliberation in Africa and beyond”, *Quest: An African Journal of Philosophy* 16, 1-2 [special issue](2002): 13-17.

¹⁵ See “Revoluția Română din 1989” [Romanian Revolution of 1989]: <http://ro.wikipedia.org>.

¹⁶ “Grațieri și amnistii legate de Revoluția Română din 1989” [Pardons and amnesties related to the Romanian Revolution of 1989], (<http://ro.wikipedia.org>). “Ucișorii din decembrie ’89, spălați de păcate de justiția post-comunistă” [The murderers of December 1989, absolved from their sins by the post-Communist justice system]: <http://www.newspad.ro/Ucigasii-din-Decembrie-89-spalatii-de-pacate-de-Justitia-post-comunista,66898.html>.

deep public mistrust relating to the effectiveness of Romanian justice in general. Probably, the first step towards this generalised public mistrust in Romanian justice came from the crucial moment of the Revolution: the “Ceaușescu Trial”, which had all the ingredients of a show trial.¹⁷

However, Defence Minister Dudu Ionescu’s take on amnesty has been slightly different: the granting of amnesty would provide the search for the “truth” of “1989”, because the military would ultimately testify the “truth”, without any fear that their depositions would be used against them in a military court of law. President Constantinescu agreed with the Minister’s proposal and tried to present the idea to the general public. Soon afterwards, eminent representatives of the civil society utterly dismissed the idea, by considering it “inappropriate”, because in their opinion, “amnesty meant oblivion”.¹⁸ Several NGOs criticised the President of trying to exonerate officers accused of shooting unarmed civilians. However, the proposal for amnesty stipulated that amnesty would only be granted to persons who were not involved in criminal lawsuits. Thus, an opportunity to find the “truth” has been wasted.

Actually, the first move towards amnesty was Decree no. 3 of January 4th 1990, a Decree that intended “the amnesty of some crimes and the pardon of some penalties”.¹⁹ The Decree amnestied political crimes committed after 1947 by people who protested against the Communist regime, including the protests against the Ceaușescu regime, which were considered criminal offences according to the old Socialist rule of law, but also any criminal offense that received a penalty of up to less than three years of imprisonment, with the exception of serious criminal offenses (such as murder, robbery, rape etc.) and human rights violations. Another Decree, no. 23 of January 13th 1990, enforced the ban of amnesty on crimes and human rights violations that were committed by persons who were representatives of the old state apparatus.²⁰ These decrees were signed by Interim President Ion Iliescu, under the authority of the Council of the National Salvation Front, the interim revolutionary government-parliament that had 145 members and ruled as a governing body, both executive and legislative, in the name of the Romanian people “by reuniting representatives of all the country’s patriotic forces, of all social classes and of all nationalities”, as “the supreme organ of

¹⁷ I use “show trial” following the definition of the term from *Collins English Dictionary*, (NY: Harper Collins, 1991): “a trial conducted primarily to make a particular impression on the public or on other nations, esp. one that demonstrates the power of the state over the individual”. See also the Kafkaesque shorthand record of Ceaușescu’s trial at: “Stenograma procesului Ceaușescu” [Shorthand Record of Ceaușescu’s Trial]: <http://ro.wikisource.org>.

¹⁸ Săftoiu, *Ibid.*

¹⁹ “Decret-Lege Nr. 3 din 4 ianuarie 1990 privind amnistierea unor infracțiuni și grațierea unor pedepse”: <http://www.lexex.ro>.

²⁰ “Decret-Lege Nr. 23 din 13 ianuarie 1990 privind grațierea unor pedepse”: <http://www.lexex.ro>.

State power” until the first free elections of 1990.²¹

These decrees actually granted amnesty to many members of the military or the police who participated in the repression of the 1989 Revolution before December 22. Also, most of the Presidential pardons granted to political perpetrators who were actually trialed and sentenced were signed by President Iliescu during his two terms in office (1992-1996; 2000-2004). In 2004 Iliescu pardoned Cozma, the leader of the miners’ riots of 1990, 1991 and 1999.²²

It seems that the business of “pardoning” political crimes, as well as “condemning” them is basically a job for the State authorities, in this case for the President, not for the governed “people”. As I mentioned before, the public debate on transitional “justice” developed more and more into a job for the elites, not for the general public.²³ After 1990-1991 the debate on “truth” and “justice” simply left the political ground and migrated into the cultural domain, mostly into history and morals.²⁴ The economic crisis that began in 2008 only deepened the public disinterest in these kinds of debates. However, the Presidential authority on matters of “transitional justice” continued during the second decade of post-Communism not only with “pardons” but also with “condemnations”: in a rhetorical gesture that countered President Iliescu’s “pardons”, in 2006, President Băsescu prepared an official “condemnation” by issuing a 600 page *Final Report of the*

²¹ See the Decree no. 2 of December 27 1989, the foundational document of the Council of The National Salvation Front: “Decretul-lege nr. 2 din 27 Decembrie 1989. Decret-lege privind constituirea, organizarea și funcționarea Consiliului Frontului Salvării Naționale și a consiliilor teritoriale ale Frontului Salvării Naționale”, *Monitorul Oficial* 4 (1989).

²² “Romania’s Iliescu Pardons Leader of Miners’ Riots”: <http://www.euronews.net/2004/12/16/romania-s-iliescu-pardons-leader-of-miners-riots>.

²³ Except for the historical moment of the “University Square” in January-June 1990, which ended abruptly with the “mineriads”, there is no other event of such level of public demand for “truth” and “justice” in Romania’s post-Communist history.

²⁴ Amongst thousands of books containing testimonies, written documents or commentaries about the history of Communism in Romania and about the history of the Romanian Revolution already published, perhaps the most impressive public document is the 158 episodes documentary about the victims of Communism from 1945 to 1989 entitled *Memorialul durerii* [Testimonies of Suffering] and produced by Lucia Hossu-Login for Romanian Television between 1991 and 2006. In my opinion, this is the most comprehensive visual account of the story of Communism told by its victims and by its perpetrators, which had a public audience on national television larger than any other visual or written accounts on this subject. Some of the interviews she conducted were with high-ranking officials of the repressive communist apparatus who were famous for their heinous crimes and these are considered unique historical documents, as well as some victim’s very disturbing testimonies. The producer, Lucia Hossu Longin envisioned this project as a “moral lawsuit against Communism”. Although it never gained the real political significance it deserved, the documentary is, on a small scale, comparable to the South-African TRC documents. 100 episodes of her documentary series were solicited by the Hoover Archives and by the Library of the US Congress. See also the script of 36 episodes published in: Lucia Hossu Longin, *Memorialul Durerii: o istorie care nu se învață la școală* [Testimonies of Suffering: A history one does not learn about in school], (Bucharest: Humanitas, 2007).

Presidential Commission for the Analysis of Communist Dictatorship in Romania”, which is usually known as the “*Tismăneanu Report*” after the name of the President of the Commission, who coordinated the research activities.²⁵ The *Tismăneanu Report* had most likely been envisioned by its initiator as an equivalent to a *TRC Report*, and as a symbolic grand closing of Romania’s communist history. The report has been heavily criticised, both by left-wing politicians and intellectuals and by political and intellectual liberals.²⁶ In the discourse which he prepared for the official issuing of this report, Băsescu declared:

“My goal is to bring a real national *reconciliation*, especially when many failures of the past are still affecting us. Our society suffers from a generalized mistrust... we can see that the lack of respect for the human being is still present. Some could ask who gives us the right to condemn... the right to condemn is given by the obligation to make the *state institutions function* in a democratic society. ... But in order to function, any administrative institution needs qualified citizens, not only professionally, but also qualified for democracy and freedom”.²⁷

However, the issuing of the report has also been interpreted as a political gesture in itself: in 2006, just before Romania entered into the EU, Băsescu became the first Romanian President to “officially condemn” communism. He also intended to counteract nostalgia and to weaken the popularity of the left-wing parties by using the Communist past to legitimise the presidency in power.

My interest throughout this paper concerns not only the fact that the concept of “transitional justice”, which includes practices, such as “amnesty”, “pardon”, “condemnation”, “decommunisation”, “lustration” and “disclosure”,²⁸ has been politicised throughout Romania’s post-communist history, but also that “transitional justice” is usually conducted under an institutionalised, mostly governmental or presidential authority. The demand of the society as a whole has not generated directly the search for “truth” or

²⁵ *Report* is downloadable at: http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf.

²⁶ See: Alina Hoge, “Coming to terms with the communist past in Romania: an analysis of the political and media discourse concerning the Tismăneanu Report”, *Studies of Transition States and Societies*, 2, 1 (2010): 16-30. See also: *Iluzia anticomunismului. Lecturi critice ale Raportului Tismăneanu* [The illusion of anti-communism. Critical readings of the Tismăneanu Report], eds. Vasile Ernu, Costi Rogozanu, Ciprian Șiualea, Ovidiu Țichindeleanu, (Bucharest: Editura Cartier, 2008).

²⁷ Băsescu, quoted in: Hoge, *Ibid.* 23.

²⁸ See my “‘Revolution of the rule of law’: transitional rule of law in post-communist Romania”, *Studia Universitatis Babeș-Bolyai. Philosophia* LV, 1 (2010): 55-65.

“justice” in Romania.²⁹ Romanian society has a weak concern for inquiring about or demanding such democratic “transitional justice” practices, such as “amnesty” or “pardon”. Instead, a “tacit” form of amnesty is more convenient, especially when supported by the State. In addition, practices such as “amnesty”, for instance, are always associated with “oblivion” both by the left-wing and by the right-wing political forces. Almost no politician thought of a possibility of an “amnesty” without “oblivion”. This is also perhaps caused by the fact that the concept “forgiveness” is usually misread as a non-political, moral concept or as a political tendency to grant an unconditional amnesty. Those who focus on transitional justice in Romania usually observe the “nonforgiving character of the institutions managing and supporting the transitional justice drive”.³⁰ There is still a strong confusion between righteousness and “truth-searching” on one hand; “amnesty” and “oblivion”, on the other hand. Basically, there is confusion between righteousness and transitional justice. The supporters of transitional justice practices sometimes do not see the unconstitutionality of their proposals. This is why the concept of “justice” is usually read exclusively as a battle between good and evil instead of being understood as a democratic struggle to achieve a consensus about common political values or common expectations.³¹

University of Cluj-Napoca

²⁹ This is also the thesis of Elin Skaar, “Truth Commissions, trials: or nothing? Policy options in democratic transitions”, *Third World Quarterly* 20, 6 (1999): 1109-28, who considers that weak public demand for “justice” in transitional countries is always influenced by the strong influence of the outgoing regime.

³⁰ Adriana Mica, “Forgiveness and Disclosure Scandals in Romania”: inter-disciplinary.net/ptb/persons/forgiveness/f1/mica%20paper.pdf.

³¹ About the historical failure of the Romanians to attain common political values, see Daniel Barbu, *Bizanz contra Bizanz: Explorări în cultura politică românească* [Byzantium against Byzantium: Explorations in Romanian Political Culture], (Bucharest: Nemira, 2001): 11-31.