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Reply to Disclosure Scandals in Romania Political Parties and the Romanian Orthodox Church

Abstract: In this paper the evolution of specific types of scandals within the field of transitional justice in Romania is shown. Furthermore, the study makes an inquiry into the reactions of different actors, socio-professional categories and organizations to the implementation of the disclosure law in Romania and to the flourishing of several legislative proposals on lustration and decommunization in the years following the 1989 anti-communist revolution. The actors under scrutiny are main political parties and the Romanian Orthodox Church respectively. The cases under review indicate that scandal is a quite versatile institution, and that the outcome of the disclosure scandals might as well be the advancement of disclosure and lustration measures, as well as also the hampering of such initiatives.

Keywords: post-communism; Romanian Orthodox Church; transitional justice; disclosure; scandal.

Introduction

The following study examines the reactions of different actors, socio-professional groups and organizations to the implementation of the disclosure law in Romania and to several legislative proposals on lustration and decommunization in the years following the 1989 anti-communist revolution. In Romania, post-communist disclosures and lustration drives have functioned as a succession of scandals. This is due primarily to the nature of the post-communist transition genre, as such, rather than specific features of Romanian society or history. The actors under scrutiny are the main political parties and the Romanian Orthodox Church. I attempt to explore the manner in which several disclosure scandals influenced the attitude of organizations concerning the disclosure and lustration drives in Romania. Furthermore, I present how disclosure scandals have managed to change the overall trajectory of disclosure endeavors in the country.

Elements of Middle and Late Communism in Romania

The international political initiatives of Romania in the mid-1960s suggested a destiny for the Socialist Republic of Romania apart from that of the Soviet Union.

First of all, at a plenary session of the Central Committee of the Romanian Workers' Party (April 15–22, 1964), a declaration was adopted that reproved the claim

of the Soviet Union over the leadership of the Communist International movement. Soon afterwards, on October 21, 1964, Gheorghe Gheorghiu-Dej requested through the Soviet ambassador in Bucharest the withdrawal of KGB advisers from Romania. The request was fulfilled in December of that same year. As the result of a small succession crisis caused by the death of Gheorghiu-Dej in early February 1965, Nicolae Ceaușescu became the First Secretary of the Central Committee of the Romanian Workers' Party. Subsequently, the 1965 Constitution was adopted, establishing the Socialist Republic of Romania and stipulating the principle of 'socialist legality.' In two–three years' time Romania moved closer to countries such as Israel (with which it did not interrupt diplomatic relations in 1967) and the Federal Republic of Germany. An event which further contributed to the popularity of Ceaușescu—both inside and outside of the country—was the condemnation of the invasion of Czechoslovakia by Warsaw Pact troops on August 20, 1968.

By the mid-1980s the country was consumed Ceaușescu's enjoyment of the cult of personality and dictatorship built around him. In a telling display of disregard, he managed to fully pay the foreign debt of the country by the summer of 1989, despite the great burden that this placed Romanian society. Aside from the political longevity of this dictator, another noteworthy element of late Communism in Romania was the promotion of Ceaușescu's wife—Elena Ceaușescu—and other members of his family to the highest echelons of power. It should also be noted that all attempts to form a viable dissident movement in opposition to the Communist President, at any level of society, were failures. Eventually, following a series of violent events that took place in Timișoara, Bucharest and other cities across the country, the regime collapsed. Ceaușescu and his wife were then sentenced to death by a military court and executed by firing squad on December 25, 1989.

Romanian Genres of Transitional Justice

In the following section, I will attempt to more clearly detail the meaning of the terms "disclosure," "lustration" and "decommunization," within the context of this paper. The process of "disclosure" refers to the institutionalized practice adopted by certain former Communist states, whereby institutions (parliamentary or governmental) issued—ex officio or by request—certificates regarding the membership or collaboration of a person with former state security services, frequently referred to as "Communist political police." References to "lustration" legislation and procedures primarily refer to legal acts and procedures of vetting public officials in reference to Communist-era membership or collaboration with the former Communist state security services. Finally, this text utilizes the term "decommunization" to refer to the vetting laws that apply to the higher echelons of the former Communist Party. Consequently, lustration is a vetting procedure concerned with political police files, while decommunization is a vetting procedure concerned with cadres' dossiers. As far as disclosure is concerned, this amounts to a lustration procedure with no disqualifications involved.

In the case of Romania, the latest major development in the field of transitional justice was the decision taken in early 2008 by the Constitutional Court, declaring that the disclosure law was unconstitutional—Law No. 187/1999 (*updated*). This law regulated the activity of the institution responsible for managing disclosure in Romania—the National Council for the Study of the *Securitate* Archives (*Consiliul Național pentru Studierea Arhivelor Securității*—C.N.S.A.S.). The *Securitate* was the State Security Department of Communist Romania.¹

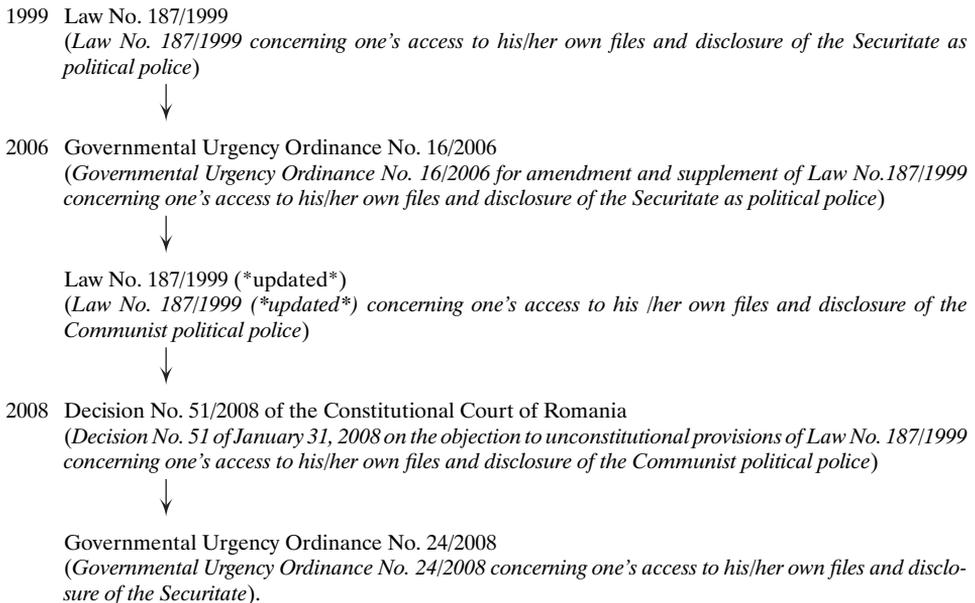
Soon afterwards, Government Urgency Ordinance No. 24/2008 was issued. Consequently, the Board of C.N.S.A.S. (the Collegium) was given the prerogative to “establish” the status of an individual as an “operational employee of the former *Securitate* organs” (*lucrător operativ al organelor de Securitate*) and that of collaborator with *Securitate*. Law No. 187/1999 was first passed in 1999, and prior to the decision establishing its unconstitutional character it was the only disclosure law fully operating in Romania. However, Governmental Urgency Ordinance No. 16/2006 was issued for the modification of Law No. 187/1999 in 2006, which led to the implementation of the updated version of the law that was subsequently declared unconstitutional.

In addition to developments in the field of disclosure, there have been insular lustration proceedings that have been implemented in the juridical system alongside related procedures to provide individuals with official recognition as “Martyr-Heroes and Freedom Fighters of the December 1989 Revolution.” Hence, there has been no lustration procedure encompassing all socio-professional categories, nor a precedent for such lustration. However, there are two bills—one concerning lustration and one dealing with both lustration and decommunization—which are currently awaiting modifications and further advancement to the status of “Lustration Law” in the first case and “Anti-Nomenclature Law” in the second. Both bills were issued in 2005.

The evolution of attitudes of political parties and the Romanian Orthodox Church towards the lustration and decommunization drives should be presented in the specific context of Romanian transitional justice, which is characterized by the distinction between two forms of collaboration with the former state security services. One is referred to as “collaboration with *Securitate* as political police”, and the other as “collaboration with *Securitate*” (i.e. collaboration with *Securitate*, but not as political police). The distinction is important, given that the initially implemented disclosure drive in Romania intended to provide certificates of collaboration (and non-collaboration), which fell under the first category. By and large, the first category is interpreted as collaboration that can be held to have infringed upon human rights. Acts of collaboration of the second kind—as it is generally understood—can be held not to have infringed upon human rights. It is important to note, that the 1999 version of the Disclosure Law—Law No. 187/1999—only defined the term “collaborator with *Securitate* as political police.” The second term surfaced subsequent to the efforts of several politicians and others to prove that they did not fall in the category stipulated by the law. As will be documented later on, several political scandals eventually led to the modification of the term in the 2006-updated version of the disclosure law—Law No. 187/1999

¹ For a detailed study of its legacy, see Oprea (2004).

Figure 1

The Dynamics of Disclosure

(*updated*). At that point, “collaboration with *Securitate* as political police” was replaced with “collaboration with the Communist political police.” Interestingly, after Law No. 187/7 December 1999 (*updated*) was declared unconstitutional, Government Urgency Ordinance no. 24/2008 replaced “collaboration with the Communist political police” with “collaboration with *Securitate*.”

In order to better visualize the developments in the field of Romanian transitional justice, I have decided to provide a brief chronicle of the major legislative initiatives and their destiny, subdivided under three headings: Disclosure, Lustration and Lustration and Decommunization. While several projects could be placed under the heading of lustration and decommunization, there are three initiatives that solely belong to the field of lustration which is why they have been listed separately. The field of disclosure is therefore ostensibly more distinctive than the other two.

Disclosure**1993 Motion and Project**

In 1993, Senator Constantin Ticu Dumitrescu—the Chief of the Former Political Prisoners Association—initiated the motion “Law Concerning Disclosure of the *Securitate*” (*Legea deconspirării Securității*). This was discussed by the Parliament and passed by the majority. It failed, however, to lead to concrete lustration measures. Soon, the motion became the “Bill on the Law Concerning Disclosure of the *Securitate*” (*Proiect al legii deconspirării*

Securității). Deputy Claudiu Iordache also initiated another motion in the parliamentary term 1990–1992 (Burcea and Bumbuş, 2006: 256).

- 1999 Law No. 187/1999
In seven years time, the aforementioned project of 1993 lead to Law No. 187/1999.
- 2005 *Governmental Urgency Ordinance No. 149/2005*
Concerned the extension of the activity of C.N.S.A.S.
- 2006 *Governmental Urgency Ordinance No. 16/2006*
Lead to Law No. 187/1999 (*updated*).
- 2008 *Decision No. 51/2008 of the Constitutional Court of Romania*
On January 31 2008, the Romanian Constitutional Court declared Law No. 187/1999 (*updated*) unconstitutional.
Governmental Urgency Ordinance No. 1/2008
It organized the activity of C.N.S.A.S. after Law No. 187/1999 (*updated*) was declared unconstitutional.
Governmental Urgency Ordinance 24/2008
It organizes the current activity of the C.N.S.A.S.

Lustration

- 2004 *Law 303/2004 on the Statute of judges and prosecutors and Law 317/2004 on the Superior Council of Magistracy*
The purpose was to prevent access to leading positions in the magistracy of judges and prosecutors who were disclosed having collaborated with the intelligence services before 1990.
- 2005 *Law no. 247/2005 which amended Law no. 317/2004.*
Bill on Lustration Law
“Bill on Lustration Law on the Temporary Limiting of the Access to Some Public Functions and Dignities for the Persons Which Have Been a Part of the Structures of Power and of the Repressive Apparatus of the Communist Regime, 2005” (*Proiect de lege privind Legea lustrației, privind limitarea temporară a accesului la unele funcții și demnități publice pentru persoanele care au făcut parte din structurile de putere și din aparatul represiv al regimului comunist*).

Lustration and Decommunization

- 1990 *The 8th Point of Proclamation of Timișoara*
The Timișoara Proclamation was proclaimed in a public demonstration held in Timișoara on March 11, 1990 and organized by the Timișoara Society, Eu-

rope, and December 16, 1989 Associations (Pavel 2003: 44–47). The importance of the Proclamation was primarily its straightforward division of black or white political affinities. The 8th Point called for banning the former Romanian Communist Party nomenclatura and the *Securitate* cadres from public office. Later on, George Șerban—the main author of the Proclamation—began drafting a bill on lustration on the basis of the principles contained in the 8th Point.

The amendment

In 1990, in the first Romanian Parliament, Constantin Ticu Dumitrescu made an amendment to the 1990 Electoral Law, stipulating the restriction the candidacy of Communist party members. The amendment was not passed and hence it was removed from the law.

- 1994 *Lustration bill submitted by Constantin Ticu Dumitrescu*
The Senate rejected the lustration bill (*Lege a lustrației*).
- 1997 *Constantin Ticu Dumitrescu passed a legislative initiative*
The Legislative Council rejected the legislative initiative “Access to Public Office Law” (*Legea accesului la funcții publice*) on the grounds that it was unconstitutional.
- 1999 *Lustration bill submitted by Teodor Stanca*
Following the death of George Șerban, his project on lustration was taken over by Teodor Stanca. On May 27, 1999 Stanca submitted to the Permanent Bureau of the Chamber of Deputies the “Legislative proposal on the temporary limiting of the access to public dignitaries and functions for the persons which have been a part of the structures of power of the communist regime” (*Proiectul de lege privind limitarea temporară a accesului la demnități și funcții publice pentru persoanele care au făcut parte din structurile de putere ale regimului comunist*). This was also rejected by the Legislative Council (Burcea and Bumbăș, 2006: 257).
- 2005 *Legislative proposal on “anti-nomenclatura law”*
“Legislative proposal on banning the access of persons who have been part of the Communist nomenclatura, for a definite period of time, to some public functions and dignitaries. ‘ANTI-NOMENKLATURA LAW’” (*Propunere legislativă privind interzicerea temporară a accesului la demnitățile și funcțiile publice a persoanelor care au făcut parte din nomenclatura comunistă “LEGEA ANTINOMENCLATURĂ”*).

The Institute for the Investigation of Crimes of Communism in Romania

The Institute is subordinated to the Government and coordinated by the Prime Minister.

- 2006/07 The issuing in 2005 of the ambitious legislative proposals on lustration and decommunization were followed by even more forceful enterprises in the

field of transitional justice the following year. For instance, the dilly-dallying in handing of the former *Securitate* archives to the C.N.S.A.S. was given a counter-impulse by the president of Romania—Traian Băsescu. The president demanded that the process of transferring the archives be sped up, so it could be completed by the date of Romania joining the EU—the 1st of January 2007. Other advancements in the disclosure drive facilitated by the President included his demand made to the Superior Council of Defense of the Country to open the files of the politicians that had been shelved on the grounds of national security. Subsequently, this reconsideration of dossiers that fell under the category of national security—what is at stake here is that, according to Law No. 187/1999 (*updated*), these files were immune to disclosure—the president Traian Băsescu also called for opening the files of clergy and sportsmen. The series of openings of politicians' files was dubbed *dosariada*. The name paraphrases the six miners' marches on Bucharest known under the name of *miner-iada*. After the *dosariada* of the politicians, priests and journalists came next.

Disclosure in the political field gave birth to an incipient auto-disclosure drive in the media and in cultural circles. At the same time, declarations emerged from all sides describing the collaboration of the former *Securitate* as an element of everyday life during the Communist regime in Romania.

The Condemnation of Communism

The end of the year eventually witnessed the episode referred to as “The Condemnation of Communism.” The condemnation of Communism, as “an illegitimate and criminal regime,” was carried out in a speech delivered by the president Traian Băsescu in front of the United Chambers of the Parliament. The declaration was based on findings of a presidential commission—the so-called Tismăneanu Committee, named after its president, political scientist Vladimir Tismăneanu (Cesereanu, 2008), (Stan, 2007). Eventually, on December 19, 2006, the official condemnation of Communism took place in front of the United Chambers of the Parliament.

During the speech of Băsescu, the members of the Greater Romania Party and its supporters were whistling, showing red cards, and interrupting the speech of the President every five minutes. Horia Roman Patapievici—a well-known intellectual who was a member of the Tismăneanu Committee—complained that the President and the supporters of the Greater Romanian Party tried to throw him off the balcony during the break of the parliamentary session. Representatives of that same party put a bottle of champagne in front of the Traian Băsescu during his speech. They also unfolded a big poster picturing the “Jail of mobsters,” and paraded with it in front of the audience.

Disclosure Scandals in Romania—Rhetoric and Outcomes

This section introduces the so-called “scandal perspective” on the episodes of disclosure and lustration in the public sphere.² As there is no possibility for direct disqualification, the most conspicuous repercussion that former collaborators face is the negative publicity provided by the media. A visible and less debated outcome of these scandals has been the emergence of a specific type of bullying within the framework of transitional justice in Romania. In general, bullying is defined as aggressive behavior directed by one or more people against another person/s for a sustained period of time. Following the work of Stig Berge Matthiesen (2006) and other authors, one can identify several subtypes of bullying, which include the following: conflict bullying, predatory bullying, scapegoat bullying, work related stalking, whistle blowing retaliation bullying, etc. The formula “extreme media exposure bullying” pertains to cases in which the targets of the mechanisms of bullying are usually politicians and persons with higher status.

Within this text, this type of bullying refers to the targeting of persons who have been publicly disclosed as former collaborators of the Communist political police. And for what it is worth, an inquiry into how the “victims” and the “witnesses” of this kind of process have reacted to the unfolding of this phenomenon in the political arena would likely produce interesting results. As far as the Romanian “victims” are concerned, my hypothesis is that their stance has evolved from accepting “extreme media exposure bullying” as a necessary evil of transitional justice, and this evolution would explain the push to declare (in a defensive and preventive manner) the pending legislative proposals on lustration and disclosure unconstitutional.

Furthermore, this paper suggests a case study for Kurczewski’s discussion in reference to “scandal as a factor of evolution” (2003). The formula as such is the title of a brief column written at the time of the Dreyfus affairs by the Polish geographer and social scientist, Wacław Nałkoski. According to Kurczewski (2003: 163–164),

the scandals, their failures and successes determine the line of admissible conduct. This line is undergoing evolution—not necessarily a unified one—though, in general, it seems that the civilizing process—to refer to Norbert Elias’ theory—in this area continues.

Paraphrasing his thesis in reference to the disclosure and lustration drives in Romania would lead to several interesting findings.

1. It certainly can be acknowledged that the disclosure and lustration scandals in Romania have mainly been political. Also, the scandals evolving around the disclosure of certain Romanian Orthodox Church leaders carry very serious political consequences. Several members of the Social Democratic Party have repeatedly and tenaciously proposed excluding religious cults from the Romanian disclosure diagram. At the same time however, in the public declarations issued on the matter by the Holy Synod, the Church seems to have moved toward political non-affiliation (or rather towards all-party political affiliation). As Andreescu (2007) has convincingly argued,

² For a panorama of political scandals see Day (1991). And for an anatomizing assessment of “scandal as the disruptive publicity of transgression” see Adut (2005).

the message of the Church when faced with disclosure scandals has been that it is a strong organization not to be put on its knees. Several members of the Orthodox clergy refused to comply in the summer of 2007 when they were called to participate in hearings held by the institute managing the disclosure drive in Romania. The spokesperson of the Holy Synod publicly alleged that the verdicts of collaboration issued about several leaders of the Orthodox Church in 2007 were “rash and tendentious” (Realitatea TV, 2007). Worthy of note, however, is that when it saw that it was faced with more and more scandals, the Orthodox Church decided to set forth its own truth investigation committee for matters concerning the history of the Church during Communism.

2. From the very beginning, I have made stated that the post-communist disclosure and lustration drives in Romania are inevitably functioning as a succession of scandals. This feature is not at all surprising if one takes into account the fact that the disclosure and lustration drives that were implemented in the region have an important shaming component.³ In other words, the anti-collaborator drive not only discloses the “denunciation” *per se*, it also renders it shameful. There are several arguments in support of this hypothesis. First of all, the scandals aroused by disclosure are the most visible part of the transitional justice period in Romania. Furthermore, shaming is the major component at stake in the disclosure of former collaborators with the State Security. As Stan (2006) noticed, the “ordinary spy” is preeminent in the pantheon of anti-symbols in post-communism, and their (negative) position is even stronger than former party officials.

3. The discussion regarding the shaming that is involved in disclosure and lustration procedures becomes increasingly interesting if it is grasped in terms of the different potential that each procedure of lustration has for damaging an individual’s reputation. Posner and Vermeule provided a discussion of this issue (2003). They investigated the relationship between the reach of the potential reputational harm of the lustration laws on the one hand and their ability to make individualized determinations on the other. Accordingly:

There are due process concerns, as we discuss elsewhere, but the important point is that deliberately overbroad prophylactic bans on office holding will not damage reputations as much as individualized determinations. The person who falls under the ban can claim to be the special case that the over inclusive rule did not account for. Indeed, if a person is already known to have belonged to the proscribed class—as an official in the prior government, for example—the lustration does not injure reputation at all. It simply ratifies what is already known. So critics of lustration are inconsistent: they worry about harm to individual reputations but appeal to due process norms to bar more rule-based lustration schemes that would minimize reputational harm (Posner and Vermeule, 2003: 34).

In other words, the authors claim that a distinction between the lustration laws is possible in terms of their level of individualization, and that this distinction also bears upon the subsequent input of the law to “destruction of reputations.” It might even be stated that decommunization laws within broader genres of “lustration laws and similar administrative measures” is a category that does not involve individualized measures. In this case, a prophylactic rationalization prohibits certain categories of

³ For more on the process of shaming of certain behaviour see Braithwaite (1992).

persons from holding public office. The argument is that a specific class—for several reasons—poses a threat to the new democratic regime. As this kind of legislation operates with clear-cut definitions, it would only be left to the executors of the vetting procedure to determine whether or not a person belongs to the category in question. Hence, it can be inferred that as far as shaming is concerned, the shaming potential of disclosure and lustration is much more vivid than decommunization measures.

This statement brings us to the Romanian debates regarding the discrimination between different categories of agents and collaborators of the political police during Communism that should fall under the deconspiration and prospective lustration drives in Romania. An overview of these debates will show, for example, that the implementation of Law No. 187/1999 aimed at shaming collaboration with the former state security services during Communism. The aim of the law was not only to reveal the behavior of denunciation, but also to render it shameful. The debates held in the Chamber of Deputies in 1999, for example, show that the dignitaries eventually tried to establish a definition of collaboration in terms of denunciation, not in terms of general cooperation with the former state security services. Individuals under suspicion were therefore likely to be designated as collaborators and participants in denunciation if the information that they passed to the state security services infringed on another person's human rights. However, defining the issue in terms of denunciation is far more generous to those under suspicion than a broader concept of general cooperation. Therefore, in light of a series of more or less successful endeavors by political actors to feign disclosure, the supporters of disclosure and lustration also tried to wash away the stain of collaboration, and what is more they intended to issue bills on lustration and decommunization. In other words, they embarked on redesigning the definition of collaboration in terms of more general cooperation. Despite the enthusiasm of certain political actors for such an expanded fan of disclosure, there are several serious obstacles that they may encounter: the legislation may be declared unconstitutional, it may be severely amended by international labor organizations, or it may be challenged in the European Court of Human Rights.

4. And thus we reach the contentious issue of the politicization of the disclosure and lustration drive in Romania. Before opening the discussion it has to be pointed out that where there is no interest in a scandal—there is no scandal. This politicization means that several political figures/circles drew benefits from the scandals brought forth by the disclosure and lustration drive in Romania. The most telling case is that of scapegoating. Hence, allegations of politicization pertain to the fact that elements in the process of revealing the truth have been hijacked by different political agendas and are used in “power politics.” At this point it is noteworthy to recall that in 2005, the transitional justice drive in Romania received its impetus from the powers that be and not from civil society. Reportedly, it was the first time that the debates had been launched at the initiative of the former and not of the latter. As a consequence, last year's clash between the President and the Prime Minister on the topic of Communism gave rise to two ‘truth investigation commissions’—a presidential commission and a governmental institute. In the meantime, smaller magnetic poles on the political scene manifested their interest in bringing up *watchdog* commissions to monitor the

“truth of investigation commissions.” Others, in a defensive and preventive manner, point to the non-constitutionality of the pending legislative proposals on lustration, as well as the possibility of political abuse. The prospective strength of lustration is thereby subjected to defensive and preventive legal claims. At the same time, historical institutes that are propped up by vested political interests are charged with carrying out “truth revelations/investigations.” Therefore, the scandals accompanying disclosure and lustration drives are politically expedient and can be seen as beneficial in that they nourish greater interest in the history of Communism. After all, they often provide unique opportunities for new generations (and the rest of the public) to learn about various aspects of the past. However, these scandals are generally detrimental to the long-term prospects for future disclosure and lustration proceedings as they generally fall short of public expectations.

5. To conclude, one of the assumptions that can be made is that—in spite of the many things that disclosure can be reproached with—the debate (and even the scandals surrounding it) are essential and irreplaceable. Kurczewski also makes this argument (1995: 125) in reference to the Polish case. For instance, the author claims that the main social significance or one of the main social considerations of the debate on decommunization and lustration originates in the fact that these debates recharge the worthiness of certain values at the level of the society.

The Actors

The Political Field

In the field of transitional justice and in disclosures of politicians, 2006 was an especially fruitful year. The political field was hit by a series of disclosures, eventually dubbed the *dosariada* of the politicians. The primary characteristic of this development was that it received political support. It surfaced due to the conflict between the President and Prime Minister. This conflict reverberated on the field of transitional justice as well. However, the destinies of individual politicians found themselves closely tied to the positions that their respective political parties had taken on the issue. The response of the different political parties to accusations or proof of involvement with the political police varied widely. Some parties, with time, changed their attitudes as their own members were caught in the expanding disclosure net. Moreover, as more and more scandals came to light, tolerance towards various forms of deviant behavior increased. Finally, the intolerance that certain political parties had initially advertised concerning certain practices was exposed to be little more than prejudice towards some particular politicians.

Nevertheless, the point has to be made that this is not the first succession of scandals to hit the political field in Romania. However, it does hold the record for the highest index of scandals. By and large, it can be stated that the political disclosure scandals of 2006 posed different destabilizing threats to the main political parties in Romania. For the classical opponents of disclosure and lustration drives—the

Greater Romanian Party and the Social Democratic Party of Romania—the sequential disclosure scandals were less disturbing than they were for the Democratic Party (Democratic Liberal Party since January 2008) or the National Liberal Party. The Greater Romanian Party, in early August of 2006, at the brink of *dosariada*, proclaimed: “Let the *Securitate*-men come to me! Ones who have never killed, who have never stolen, and were not underlings, gather around in order to save—together—the homeland from disaster!” (Ziarul de Iași, 2006). It goes without saying that a completely different attitude would be displayed if disqualification were at stake, not solely public exposure of one’s former collaboration. But the detractors of transitional justice in Romania resist such measures on the basis of various “European standards,” which they assume to be averse to lustration and decommunization proceedings.

What about the parties who supported the disclosure and lustration drive? Curiously enough, the bulk of 2006 disclosures were among the members of parties supporting the procedures. The aforementioned case of Mona Muscă, one of the initiators of the lustration bill, serves as the most illustrative example. Parties in favor of the drives are the ones most likely to experience some kind of cognitive dissonance when faced with internal deviations. As a reaction to the disclosure scandals, both Liberals and Democrats (Democratic Liberals since January 2008) tried to prove that now more than ever they were determined to lobby for the implementation of lustration proceedings. Both went so far as to pledge to exclude from their ranks anyone disclosed as a collaborator. However, the media often presented evidence in such a way that prejudiced decisions concerning the exclusion of party members. For several reasons, the lustration scandals did not present these parties in the best light. First of all, to a certain extent they proved that no one is entirely innocent, not even those who pleaded for the moral cleansing of the society. And second—I claim—they gave the impression that the disclosure proceedings are subject to power politics to a greater extent within the parties supporting disclosure and lustration proceedings than within those that detract from them. The attitude of retreat in response to transitional justice is constant in certain circles, and this attitude in combination with legalistic arguments is often taken for rational discourse. Not to mention the fact that not all circles in the Romanian political arena regard former collaboration with the State Security services as deviant behavior. Quite to the contrary—members of the Greater Romania Party are not as concerned with the shaming component of disclosure and lustration proceedings, as they are concerned with their would-be disqualification. On the other hand, if the political parties that support transitional justice proceedings keep discovering skeletons in their own closets the cognitive dissonance they experience may eventually cause them to retreat.

The Romanian Orthodox Church

In comparison with political parties, the Romanian Orthodox Church, and more to the point, the Holy Synod of the Romanian Orthodox Church, turned out to be a much

less versatile player. After the 1989 anti-communist revolution, the Orthodox Church has been accused many times of enjoying comfortable proximity with the former ruling party and political police during Communism. Priests seldom rejected the negative anti-denunciation perceptions against them, but all of them did not keep quiet. The few who publicly faced allegations tried to build a defense by offering a small but very important terminological change: instead of denunciation they pleaded guilty to collaboration. And what is more important—none of them admitted to having encroached upon the confessional.

This position closely echoes that of the Holy Synod. With the exception of small nuances, the Holy Synod stands firmly on the position that any case of would-be collaboration with the former political police is contextual, and that it is to be dealt with by way of confession. Going even further, in 2007 the Orthodox Church decided to disregard the rulings of C.N.S.A.S.—and to only take into account the findings of a historical committee assigned and entrusted by the Church to investigate the “persecution and the suffering of the Romanian Orthodox Church during the Communist dictatorship” (Press Office of the Romanian Patriarchy, October 23, 2007b). Reportedly, the origins of this historical committee, which was set up in February 2007, can be traced to the contentious manner in which the 2006 presidential committee for analyzing the Communist period and C.N.S.A.S. dealt with certain aspects of the Orthodox Church’s history during Communism. The presidential committee, dubbed the Tismăneanu Committee after its president, political scientist Vladimir Tismăneanu, was given six months to certify the illegitimate and criminal nature of the Communist regime in Romania (Stan 2007). The Orthodox Church reproached the Committee for having portrayed an inadequate picture of its history by stating that the Church survived at the expense of its integrity and that several of its leaders were close collaborators of the former state security services. As far as the C.N.S.A.S. is concerned, the Orthodox Church concluded that the faulty manner in which it carried out its mandate hampered the autonomy of the Church. At the time of the 2007 elections and the enthronement of a new Patriarch of the Church, protests were repeatedly voiced.

Scandal and the Dynamic of Implementing

Disclosure, Lustration and Decommunization Measures in Romania

The following section highlights different aspects of the disclosure, lustration and decommunization proceedings in Romania. In order to facilitate an understanding of the phenomenon of “scandal as a factor of evolution” (Kurczewski, 2003) in the field of transitional justice in Romania I have decided to present some of the most important turning points in the implementation of disclosure, lustration and decommunization measures. The study also presents some of the scandals which facilitated this outcome.

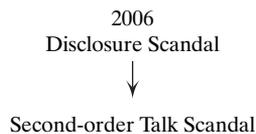
A Discussion of the Political Field

Case Study 1:

The disclosure scandal involving Mona Muscă, a former liberal deputy, was rather perplexing given that she was part of the inner team responsible for proposing the bill on lustration in the first place. The board of C.N.S.A.S. revealed that she was a collaborator of the former state security services during the period in which she taught Romanian at Timișoara University. The board claimed that she used to provide information mainly about foreign students. The disclosure scandal was amplified by the fact that until that point she was regarded as “the good fairy” of Romanian politics. For several days in 2006 the headlines of newspapers were marked by introspection and clamors of disappointment, which might lead us to conclude that this political scandal was actually what Mats Ekström and Bengt Johansson (2006) refer to as *second-order talk scandal*. Ekström and Johansson’s (2006) terms, “first-order” and “second-order talk scandals”, were inspired by the work of John B. Thompson on “first-order” and “second-order transgressions.” Briefly stated, second-order transgressions imply the following: the scandal derives from the transgression of one norm but during its development another transgression appears. In the case of the talk scandals, second-order transgressions refer to some scandalous statements that were made in the media subsequent to the outburst of the first-order transgression, statements which had affected some scandalous dimensions in their own turn (Ekström and Johansson, 2006: 15). It might refer not only to a person’s behavior during a scandal, but also to the revelation of other potentially scandalous items. Following Thompson, Ekström and Johansson (2006) claim that it is often the case that these second-order transgressions cause more reputational harm than the intrigue of the original scandal as such. But going back to the case of the liberal deputy, what seemed to have bothered civil society most about the disclosure scandal was that in her initial declarations she refused all allegations, and only afterwards did she admit that her collaboration was merely formal and she did not harm anyone.

Figure 2

Dynamics of the Disclosure Scandal—Case Study 1



A civil institution—the Timișoara Society—withdrawed the titles and awards it had previously given the deputy. Additionally, the Central Permanent Bureau of the National Liberal Party withdrew its political support for Muscă. Furthermore, on September 2, 2006 the Permanent Delegation of the party voted for the exclusion of Mona Muscă from its ranks. The exclusion was staged as a painstaking “degradation ceremony.” What is important—she was excluded more than one month before the official C.N.S.A.S. verdict. The grounds (used more often) for her exclusion were

not the official verdict of collaboration with “*Securitate* as political police,” but only evidence that the former deputy had signed-off on an undertaking and provided informative notes. And thus, her exclusion amounts to an affirmative action of anticipated lustration proceedings. But Mona Muscă was not the only politician expelled from the ranks of the Liberal Party in the Casino in Constanța—a town in southern Romania, at the seaside—that September day (DG 2006). Her case was raised for discussion together with that of Ion Ghișe—the deputy and former mayor of Brașov, a town in central Romania. Compared to the case of Mona Muscă however, the case of Ghișe amounted rather to an affirmative action of retrospective lustration, as the former mayor had already made public allegations about his collaboration several years before. This happened after Ion Ghișe was disclosed in the media as a former collaborator.

The important “progress” brought about by the Mona Muscă disclosure scandal is the fact that she was the first Romanian politician to publish his or her *information network file* on the Internet. She was soon followed by the Democratic Senator Radu Berceanu, who also published his *Securitate* file on the Internet, a file which in comparison to the one of Mona Muscă concerned *information surveillance* (Balogh 2006)⁴.

Another development in the field of transitional justice, which was promoted subsequent to this disclosure scandal, was the position that dignitaries can actually be charged with forgery after being disclosed as former collaborators of the state security services. Before it was declared unconstitutional in 2008, Law No. 187/1999 (*updated*) did not prescribe disqualification. An indirect form of disqualification could have been granted by charging one with forgery or perjury. This happened in cases where the certificate issued by the C.N.S.A.S. (ex officio or by request) to the persons who “occupy or aspire to be elected or appointed” to the “dignities or offices” enlisted in the body of law in art. 2 contradicted their own statements regarding their capacities as former agents or collaborators. The Government Urgency Ordinance No. 16/2006 introduced under art. 3¹, (8) the proviso that the C.N.S.A.S. has to notify the competent authorities in case one has invalidated one’s own authentic statement. However, since institution began operation in 2000, the case of Mona Muscă in 2007 marked the first point at which the legal pursuit of dignitaries for false declarations became a reality (RI 2007). In March 2007, C.N.S.A.S. refused

⁴ The *Securitate* archive distinguished between several types of documents. In particular, distinctions can be drawn between information surveillance files, information network files, criminal investigation files and case files. “Information surveillance files (*dosare de urmărire informativă* or DUI), bearing the name of the victim, included one or several bound volumes of 300 to 400 pages each assigned a unique number. Gathering notes, reports, syntheses, photographs and addresses of individuals monitored by the *Securitate*, these files were opened for special cases that had to be solved within a year. Information network files (*dosare ale rețelei informative*), bearing the name or the nickname of the informer, included one or several volumes usually accompanied by attached folders (*mape-anexă*) containing all the written reports the informer supplied to the political police [...]. Criminal investigation files (*dosare de anchetă penală*) were opened for crimes against national security, as defined by Communist legislation. There were strict regulations—not always observed—on when, who and how to open and close these files, which documents to attach and in what order. Case files (*dosare de problemă*) gathered information on target groups, not individuals, the political police viewed as important or problematic from an intelligence viewpoint” (Stan, 2005).

Mona Muscă's appeal regarding her collaboration with the political police, and the Court of Appeal confirmed the verdict. One day after the Court rejected her appeal of an indictment for collaborating with the *Securitate*, Mona Muscă resigned from Parliament and quit all her political activities. In August 2008 some members of the Democrat Liberal Party offered to run her as a candidate in the fall parliamentary elections, but she politely declined the invitation.

Case Study 2:

Collaborator of Securitate as Political Police

First of all, there has been a great deal of controversy regarding the syntagm “*Securitate* as political police.” Moreover, heated debates have surrounded the notion of “the collaborator” in Romania. These controversies eventually necessitated the modification of Law No. 187/1999.

As above stated, in the Romanian case, much of the debate on disclosure and lustration drives has focused on the definition of collaboration with the “*Securitate* as political police.” In other words, what sort of collaboration with the repressive apparatus of the Communist regime can be held as having conducted “political police activities”? The bone of contention was launched with the issuing of Law 187/1999. The syntagm “*Securitate* as political police” was held to imply the existence of another category of collaborator: “the collaborator of *Securitate*” (i.e. “*Securitate*” and not “*Securitate* as political police”). For those supporting the disclosure and lustration drive in Romania, the distinction between “*Securitate* as political police” and “*Securitate*” constituted an artifice for discriminating between “bad and good *Securitate* men.” This distinction was interpreted as offering the possibility of eluding the pursuit of moral trials for those disclosed as collaborators. While for others—the Greater Romania Party and Social Democratic Party by tradition—the syntagm “*Securitate* as political police” pertains to the historical evidence that not all collaborators of *Securitate* have committed political police acts. Soon thereafter, as stated in the introductory part of this paper, an obvious tendency developed amongst disclosed politicians: while admitting their collaboration with state security services, they denied accusations of having participated in political police activities. In other words, there was a very strong temptation on the part of politicians to prove that they had not infringed upon human rights.

Collaborator of Communist Political Police

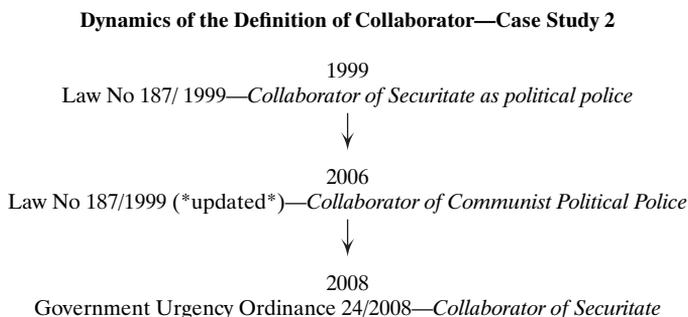
In order to rectify the drawback of the wording “*Securitate* as political police,” the supporters of the disclosure drive introduced several changes by way of Government Urgency Ordinance No. 16/2006. This ordinance extended the mandate of C.N.S.A.S. and tried to rectify the controversial syntagm “*Securitate* as political police” in Law No. 187/1999 and replace it with “Communist political police” in Law No. 187/1999 (*updated*). It was thought that this rectification would definitively establish that the *Securitate* was in its entirety a tool of political police activity. And thus, the only issue left to substantiate was one's collaboration and the degree of this collaboration. But the modifications did not achieve their intended results. The changes went unnoticed

and it was still mistakenly believed that the body of the law maintained the distinction between a collaborator and a collaborator who conducted political police activities.

Collaborator of Securitate

The notion “collaborator of *Securitate*” is the latest development in the field of disclosure in Romania. As stated above, after Law No. 187/1999 (*updated*) was declared unconstitutional the activity of the Romanian institution managing disclosure was organized in accordance with the Government Urgency Ordinance 24/2008 concerning access to one’s personal file and disclosure of the *Securitate*. The ordinance also brought about lower standards for applying this formula. Another major change was that C.N.S.A.S. no longer issues verdicts of collaboration. As matters currently stand, the Board of C.N.S.A.S. limits itself to “analyzing the ‘Concluding Notes’ issued by the C.N.S.A.S. Investigations Department resulting from verifications (ex-officio or by request), and decide if the matter is to be taken to a court of justice or a decision of non-collaboration is to be issued” (C.N.S.A.S., 2008).

Figure 3



Case Study 3:

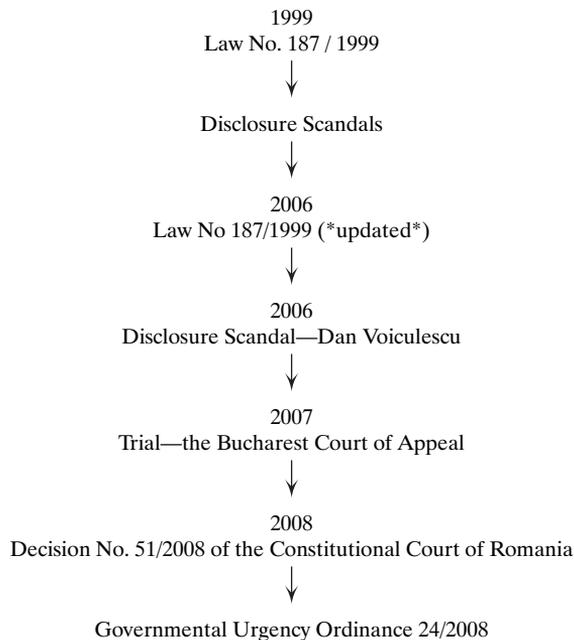
The disclosure scandal involving Dan Voiculescu, the media mogul and politician, went through an odyssey of second and third-order transgressions and talk scandals (Ekström and Johansson, 2006), which eventually managed to change the course of the disclosure drive in Romania. For this reason, there is a direct link between the 2006 disclosure scandals of Voiculescu and the fact that Law No 187/1999 (*updated*) was declared unconstitutional.

Dan Voiculescu, a member of the Romanian Senate in the parliamentary term 2004–2008, is the founder and president of the Conservative Party, and apart from the 2006 disclosure scandal his name has popped up in several corruption scandals. Another controversial matter is the fact that he turned over the Intact Media Group, comprised of several newspapers and TV stations, to his daughter. But getting back to the issue of disclosure, in August 2006 the Board of C.N.S.A.S. ruled that Dan Voiculescu collaborated with the Communist political police. Subsequently, Voiculescu’s attitude vis-à-vis the decisions of the Board lead to several “second-order talk scandals” (Ekström and Johansson, 2006) in the media. In fact, in order to prove his innocence, Voiculescu went so far as to bring his cousin to testify in front

of the College that she did not suffer any consequences from the reports that he had delivered to the *Securitate* about her (Realitatea TV, 2006).

Getting back to the issue of the 2008 declaration of the Constitutional Court which ruled Law No 187/1999 (*updated*) to be unconstitutional, this decision can be traced back to the 2006 disclosure scandal. More explicitly, it finds its roots in Voiculescu's decision to challenge the ruling of collaboration issued by the Board of C.N.S.A.S. in the Bucharest Court of Appeal. Voiculescu's lawyer raised the issue of C.N.S.A.S.' unconstitutionality and the case file was subsequently sent to the Constitutional Court. As a consequence, on January 31, the Constitutional Court found that Law 187/1999 (*updated*) was unconstitutional.

Figure 4
Dynamics of Disclosure and of Disclosure Scandals—Case Study 3



About the Romanian Orthodox Church

Case Study 4

Throughout 2007 the Romanian Orthodox Church and members of the Church leadership faced the same type of disclosure scandals that hit politicians in 2006. These episodes followed the key decision taken by the President of Romania in 2006 to open the files of the priests, which were previously shelved on the basis of national security issues. After this decision, three priests publicly acknowledged that they were collaborators of the state security services. Yet again, when the presidential condemnation of Communism (attended by the Patriarch himself) shed unpleasant light on its image, the Orthodox Church reacted by initiating its own commission for inquiry

into the history of the Church during Communism. A new succession of scandals emerged after the death of the Romanian Patriarch on July 30, 2007. Members of C.N.S.A.S. called for the serious scrutiny of members of the Holy Synod that would be eligible as candidates for consecration and enthronement as the new Patriarch of the Romanian Orthodox Church. Going further, several voices also called for mandatory verifications of laymen in the Electoral Council of the Church. Articles in the media pointed to serious political plots that were unfolding during the election of the new Patriarch; more often—freemason involvement was discussed. The Orthodox Church seemed to substantiate the former conspiracies to certain extent when it publicly called for ‘no political interference’ in its election of the Patriarch. The latter issue was addressed after the elections; when the Holy Synod issued a statement that the enthroned Patriarch—His Beatitude, Daniel—is not and has never been a member of any Masonic lodge either from inside or outside the country. And that he does not hold any other belief except the creed of the Orthodox Church (Press Office of the Romanian Patriarchy, 2007a).

Eventually, the Board of C.N.S.A.S. (which was seriously divided on the matter of the verification of the leadership of the Romanian Orthodox Church in the wake of the elections) postponed issuing several verdicts until after the election of the new Patriarch. In reaction, the Church claimed that the College aimed to hamper its autonomy by way of initiating verifications and ruling certificates of collaboration with the former state security services exactly at the time when the elections were held. Soon after the elections, the Board of C.N.S.A.S. delivered verdicts of collaboration for members of the leadership of the Church. However, in reference to the current Patriarch of Romania, His Beatitude, Daniel, it was revealed that the name of the elected Patriarch appeared on a list of files that, reportedly, was suppressed on December 23, 1989.

What is more important—on gatherings, which took place on the 22nd and 24th of October 2007, the Holy Synod for the first time addressed the issue of the collaboration of some of its members. The conclusion reached at the meeting was the following: “the National Council for the Study of *Securitate* Archives, in its current state and structure, can not assess in an impartial and unbiased way the activity of the Orthodox clerics during the Communist dictatorship” (Press Office of the Romanian Patriarchy, 2007b).

I would infer that the position adopted by the Romanian Orthodox Church in the aftermath of these scandals is a robust one. Since the Romanian anti-communist revolution of 1989, scandals regarding the equation “Romanian Orthodox Church—Communism—C.N.S.A.S.” flourished periodically (Stan and Turcescu, 2005 & Timofeychev, 2007). For the Orthodox Church the post-communist period began with a temporary withdrawal of the former Romanian Patriarch. Reportedly, this withdrawal was originally intended as an actual resignation and was brought about by different pressures that were exerted on the then Patriarch, Teoctist, in relation to his culpable Communist past. After this quite unpleasant episode, other scandals accompanied the post-communist reign of Patriarch Teoctist (Stan and Turcescu, 2005), but they were generally related to the presumptive engagement of Patriarch Teoctist in

the extreme right in his youth. Furthermore, there was a series of disclosure scandals that paved the way for the grand 2007 disclosure festival of the Orthodox clergy. In my interpretation, the Orthodox Church, even though it might have felt vulnerable subsequent to this public exposure, managed to produce and maintain a discourse that—surprisingly—has made it look stronger than before. For instance, in January 1990 the Church publicly apologized to the Romanian people for its weaknesses in the past (Stan and Turcescu, 2005: 661). At the same time, it claimed that as the only officially recognized religion in Romania during Communism, it was subject to extreme pressure from the former state security services, which had to result in forcing some of the priests to collaborate. By the same token it is argued that the collaboration with the former political police was contextual and instrumental, and it never encroached upon the confessional. It is today to be dealt with by way of confession. For this reason, the confession is a much more powerful instrument than any kind of verdict that could be delivered by any other institution. Please recall that the annoyance of the Church with C.N.S.A.S. was justified by the eccentricity of the institution that was accused of seeking ways to humiliate the Romanian Orthodox Church and hamper its autonomy.

It is also noteworthy that the Church did not publicly discuss its agenda in cases where encroachment upon the confessional was proven. It nevertheless stated that:

The assessment of this period is going to be done according to our own criteria of analysis which will make a distinction between the situations in which the collaboration with the *Securitate* brought damage to the Church or to some third persons and the ones in which collaboration was a condition of survival and of the missionary-pastoral activity of the church communities (Press Office of the Romanian Patriarchy, 2007b).

Hence, it could be argued that the notion of having committed political police activities—so intensively debated in the field of politics—finds its equivalent in “encroaching upon the confessional” specific to the field of religious cults.

Two levels of discussion on collaboration might be substantiated, both of them having dual possibilities. At the political/cultural level: collaboration with the former state security services that infringed upon human rights on the one hand, and on the other collaboration with former state security services which did not infringe on human rights. And at the level of the religious cults: collaboration with former state security services encroached upon the confessional on the one hand, and on the other collaboration with former state security services that did not encroach upon the confessional. The existence of this would-be encroachment upon the confessional is something that the Orthodox Church has hitherto refused to admit to within its ranks, not even in the case of individual deviations.

To conclude, as long as the disclosure law in Romania does not embark upon disqualification, there are slight chances that the two levels of collaboration will never have to face each other in the mirror. The Church has already declared that as an organization it will not take into consideration the verdicts of the C.N.S.A.S., which at present is relevant to the first level. On the other hand, it can be argued that the Church’s distinction between the two kinds of collaboration is a step forward in admitting that the kind of collaborations that encroached upon human rights might have existed after all.

Figure 5

Dynamic of the definition of collaborator—case study 4**Conclusion**

In the foregoing text I have attempted to document the validity of employing the so-called “scandal perspective,” when trying to understand evolution in the field of transitional justice in Romania. The four cases presented point to the conclusion that scandal is quite a versatile institution, and that the outcome of the disclosure scandals might as well be the advancement of disclosure and lustration measures, as well as the hampering of such initiatives. Thus, the conclusion of the present study seems to pave the way for an inquiry into the conditions which facilitate or slow down such developments in the field of transitional justice in Romania.

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Laws, Bills and Governmental Urgency Ordinances

- Decision No. 51 of January 31st 2008 on the objection of unconstitutionality of provisions of Law No. 187/1999 concerning one's access to his/her own files and disclosure of the communist political police*
- Governmental Urgency Ordinance No. 149/2005*
- Governmental Urgency Ordinance No. 16/2006 for amendment and supplement of Law No. 187/1999 concerning one's access to his/her own files and disclosure of the Securitate as political police*
- Governmental Urgency Ordinance No. 1/2008*
- Governmental Urgency Ordinance No. 24/2008 concerning one's access to his/her own files and disclosure of the Securitate*
- Law No. 187/1999 concerning one's access to his/her own files and disclosure of the Securitate as political police*
- Law No. 187/1999 (*updated*) concerning one's access to his/her own files and disclosure of the communist political police*
- Law 303/2004 on the Statute of judges and prosecutors*

Law 317/2004 on the Superior Council of Magistracy

Law no. 247/2005 which amended Law no. 317/2004 on the Superior Council of Magistracy

Pl-x nr 545/2005—Propunere legislativă privind interzicerea accesului la demnități și funcții publice, pentru o perioadă determinată, a persoanelor care au făcut parte din nomenclatura comunistă “LEGEA ANTINOMENCLATURĂ” [Pl-x no. 545/2005 Legislative Proposal on the Banning of the Access, for a Definite Period of Time, to Some Public Functions and Dignities for the Persons Which Have Been a Part of the Communist Nomenclatura. “ANTI-NOMENKLATURA LAW”] (2005).

Pl nr. L642–2005—Proiect de lege privind Legea lustrației, privind limitarea temporară a accesului la unele funcții și demnități publice pentru persoanele care au făcut parte din structurile de putere și din aparatul represiv al regimului comunist [Pl no. L642–2005—Bill on Lustration Law on the Temporary Limiting of the Access to Some Public Functions and Dignities for the Persons Which Have Been a Part of the Structures of Power and of the Repressive Apparatus of the Communist Regime] (2005).

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