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The Condemnation of Communist Crimes in Romania and the Application of International Law

Opening Remarks by Dr. iur. Stefanie Ricarda Roos

Dear Mr. Oprea,

Dear Professor Motoc and Professor Pârvulescu,

Dear Mrs. Deteşeanu,

Dear Ralucas,

Dear colleagues,

Distinguished representatives from the Diplomatic Corps,

Honourable Guests,

Ladies and Gentlemen!

It is a great honor and a personal pleasure for me to welcome you on behalf of the Konrad-Adenauer-Stiftung's Rule of Law Program South East Europe to our conference on the topic "Condemnation of Communist Crimes in Romania and the Application of International Law".

My name is Stefanie Ricarda Roos. I am the director of the Konrad-Adenauer-Stiftung's Rule of Law Program South East Europe, which is co-organizing today's event.

I feel privileged to be a part of this conference primarily for two reasons:

- First, although Romania is the focus of this gathering, our conference deals with a topic which I believe is of the utmost impor-

tance for any country whose past included a communist regime,

- but it secondly also gives us the opportunity to discuss the relatively unexplored academic endeavour of how Romania (and not just Romania, but other countries like it) has utilized criminal law to deal with the crimes committed during the communist regime.

On that note, I would like to congratulate the two Romanian researchers Raluca Grosescu and Raluca Ursachi, the authors of the book that we are presenting today, for their tireless efforts and extensive research in explaining the policies of criminal transitional justice applied by Romania and other countries.

It goes without saying that we responded positively to the authors' request for support of their publication, and we are happy that through this project and the conference which we are organizing today, the Konrad-Adenauer-Stiftung – this time through its Rule of Law Program South East Europe – has once again the opportunity to co-operate with the Institute for the Investigation of Communist Crimes in Romania.

The reconciliation with the communist past through legal means has, from the very be-

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gining of the Rule of Law Program, constituted a core focus of our endeavour in the countries of South East Europe to promote and support the establishment and consolidation of democratic states based on the rule of law. Achieving transitional justice by legal means, when necessary by means of criminal law, is one of the key-objectives of our activities.

Contributing to the general debate on the topic of transitional justice is one way of attaining this objective, and we do this with analyses and examples of different systems. Today's conference is thus the continuation of a range of projects – including conferences, publications, seminars, and study visits – that we have developed and supported both in this region and in Germany itself on the topic of dealing with transitional justice and reconciliation with the communist past.

Our work in the countries of South East Europe in this field has showed us that, although very few people question the importance of dealing with the past in order to establish a democratic state, the means and instruments of transitional justice are highly disputed. The same holds true for Germany, a country which was twice confronted with a totalitarian past and the question of how to deal with it during its transition to democracy, *i.e.* after the National Socialist dictatorship during the 1930s and early 1940s, and after reunification of Western Germany with Eastern Germany after 1989.

Just as in the German case, where the legal sanctions imposed on those responsible for the killing of refugees from Eastern Germany on the German-German border were highly disputed, in Romania the criminal sanctions imposed against former communist officials or perpetrators raise fundamental legal questions. In both cases the most basic question was – and I know this has been the case in Romania in the early

1990s – whether to punish the perpetrators or to grant them amnesty.

Punishment in transitional societies is generally supported because it is understood to play a foundational role in the sense that it can lay the grounds for the new democracies: it creates the premises for the establishment of a new type of justice, by marking the boundary between justifiable and unjustifiable state violence. In this sense, transitional justice defines and establishes past state injustices, and sets the standard for the new rule of law abiding state.

However, if transitional justice is perceived as an important process for the establishment and consolidation of a democratic state based on the rule of law, it follows logically that the means of this transitional justice must themselves be in accordance with the principles of the rule of law.

Hence, transitional justice not only promotes the establishment of the rule of law in a country of transition, but the rule of law imposes limitations upon a country's ability to deal with the past from a legal, particularly a criminal law, point of view: Specifically, criminal transitional justice in a state based on the rule of law can only establish individual guilt and punish individual crimes as provided for by the law. This limitation has been most controversial in the criminal sentencing of those responsible for the shootings at the German-German border to which I referred earlier.

Criminal transitional justice is only a single, limited means of creating justice. It can hardly, if ever, respond to the entirety of economic, social, political and human rights damages inflicted by a longstanding totalitarian regime. The shortcoming of criminal transitional justice is that it cannot guarantee the establishment of a just society through the criminal prosecution of separate cases of abuse. The mere prosecution of

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crimes, despite its symbolic and cathartic role, is not sufficient by itself to produce a change in individual attitudes and political culture. What is more, transitional justice policies, including criminal law policies, cannot be separated from the political context in which they come into force. On the contrary, political culture shapes the choice of transitional justice policies. As such, criminal transitional justice will always bear the imprint of the political context. I believe that the example of Romania, as well as of other countries in transition, clearly show that the legal systems applied in transition periods are socially constructed. This is obviously an important part of the (criminal) transitional justice dilemma: is the legal order applicable to transitional justice *national*, with its social-political bias, or *international*, which can supposedly lift justice above politicized interpretations and approaches?

Twenty years have passed since the communist regimes in Romania, other countries of Central, and Eastern Europe, and in Eastern Germany came to an end. Twenty years seems to be a long time; after all, it is the time that it takes a human being to develop into a grown-up person.

Despite the fact that so much time has passed since the end of the communist regimes, I strongly believe that it is not too late to face the dilemmas and challenges I have just mentioned as well as many others dealing with a country's totalitarian past. Questioning the very means of transitional justice policies, as well as their local implementation and results, will remain a worthwhile pursuit until each society finds peace with the heritage of its recent past.

The publication we are launching today is a very valuable attempt to stir the debate on such issues, to provoke both society and decision-makers to reconsider their position towards the communist past and the means

of restoring justice. I strongly encourage you all to read the book we are presenting today.

Before I close, I would like to express my special thanks to the Institute for the Investigation of Communist Crimes in Romania, in particular to its President, Mr. Oprea, not only for co-hosting our debate today, but also for the hard and unabated work of the past several years to shed light upon the crimes of the former regime, and thus bring some comfort to the victims.

My special thanks also goes to the two authors who gave us the opportunity to reflect upon such important issues, and to the speakers who have recognized the significance of this topic and agreed to take time from their busy schedules and be here with us today.

I wish us all an interesting afternoon with fruitful and inspiring talks and discussions, and I hope this is only the beginning of a series of events dealing with the prosecution of the communist past in Romania.

Thank you very much for your attention!