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**4. RESTITUTING EXPROPRIATED PROPERTY IN POST-SOCIALIST COUNTRIES.
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Restitution Policies and National Identity in (Post)Communist Romania. The Case of the Jewish Community

'Transforming Socialist Property'¹

Viewed as a central dimension of the economic, political and social process which affected post-socialist countries, the restoration of the private property was considered the fundament of a new system in which the market economy replaced the planned one and where the individuals played the former role of the State (CeFRes, 1997, 5).

Nevertheless, starting from the mid-nineties, this thesis of a radical gap between the socialist and the post-socialist use of property was progressively dismantled. First, its contenders started by explaining the limits of a 'transitology' literature², which presupposed a predicted and predictable evolution, a gradual and compulsory succession of developmental phases (e.g. Kornai 1990). The principle of a linear evolution, imposed by the 'transitology' paradigm, was deconstructed and replaced, starting from the question whether this paradigm constitutes a valid conceptual framework, which may be properly applied in relation to the multiple post-communist spaces.

Secondly, the proponents of the revision of the 'transitology' thesis continued with the remark that the post-socialist regime of property had not been established only upon the reconstruction of the presocialist property (from between the two world wars), but also in relation to principles, legal terms and political practices inherited from communism. This is, in fact, anthropologist Katherine Verdery's most important thesis:

I suggest that, contrary to those who see de-collectivization as a process of *(re)creating private* property, it is better understood as a process of *transforming socialist* property. Socialism was not a property void; it had its own structure of property rights, a structure that had a long afterlife in the course of dismantling socialism [...] Old power structures renew themselves in radically changed circumstances (Verdery, 2003, xiv).

Starting from the concepts formulated by the post-socialist studies and especially from the necessity of taking into account the recent past as a general framework for analyzing the (re)construction of private property in the countries of Central and Eastern Europe, this chapter builds on two complementary approaches.

On one hand, I am discussing the legislation area, as the means whereby (to use Claus Offe's terms, Offe, 1997, 85) 'the dilemmas of justice in post-communist transitions' were resolved in Romania. Borneman, a law anthropologist who argues that

1 Title borrowed from Verdery, K. (2003, xiv).

2 For a critical presentation of the transitology approaches, see Dobry, Michel (2000, 585–614)

the pursuit of retributive justice is a crucial element of the postcommunist (German) *Rechtsstaat*, assumes that ‘when socialist states dissolved, socialist normative system went with them’ (Borneman, 1997, 16). My study tries to question this statement, presuming the existence of continuity between the socialist and post-socialist regime of property.

On the other hand, my reflections concern the possibility/ impossibility of an ‘ethnic reading’ of the restitution legislation. My hypothesis is that ‘the nation’ is reflected in the legal structure, especially in the case of the property regime (this is also the central assumption of Alexander Karn’s study on the restitution policies developed in the former Czechoslovakia and in the Czech successor states: Karn, 2000). Hence, I presume that the legislative redefinition of the private property ~~through the restitution laws~~ and the public debates around ~~these~~ laws could tell us something about how the legislators have constructed an ‘other’ through the restitution policies. Moreover, I presume that the definition of the ‘citizen’ and of the ‘nation’ by means of the restitution policies is still ‘coherent’ with the recent past, that these ‘Romanian people’, whose civil rights, including the right to property, are re-defined, and whose heritage of the former Party State³ is restored, represent (during post-socialism, exactly like during socialism) ‘an organic nation, by the ethnic understanding of citizenship’ (Barbu, 2001, 23; the author makes this remark while discussing the understanding of citizenship as it emerges from the Romanian Constitution of 1991).

I have chosen to examine in greater detail the case of the Jewish community in Romania because it seems particularly relevant for two reasons. Firstly, the Jewish communities in Eastern Europe were ‘victims’ of a double spoliation – by the Nazis and their Aryanization policies and by the communists, following nationalization. A second reason why I have chosen this case study regards the double quality of the members of the Jewish Community: they are both, part of an ethnic and of a religious minority. Therefore, I deem this to be an illustrative, while by no means a typical, case, which may underpin a wider reflection on the status of the ‘foreigner-outsider’ and of the ‘minorities’ in particular, as reflected in the post-socialist property regime.

I will mainly analyse the case of the Jewish communal property (which means the works, the artefacts and especially the buildings belonging to the Jewish communities and organizations). I have restricted my study to the communal and organizational Jewish assets principally firstly because I consider that an ‘ethnic reading’ of the reprivatization is not (necessarily) supported by the level of individual property⁴,

3 Decree no. 30/ 18 January 1990, M.O., No. 12/19 January 1990 (Art. 1 : ‘All the patrimony of the former Romanian Communist Party will pass to the State, and will be considered goods belonging to the entire people’).

4 The legislation of restitution for individual properties doesn’t exclude the members of different ethnic or religious communities, but imposes citizenship and residency requirements for regaining assets (or even for owning land and real estates).

but could be valid on the level of communitarian assets (assets that belong to the different ethnic or religious communities).

Secondly, the restitution of the property expropriated from the Jewish communities has both, a highly symbolic and a considerable material dimension. The transfer of ownership of the places of worship, cemeteries, former schools, etc, often coincides with a moment of revival of the Jewish Communities in Central and Eastern Europe, as remarked by Horel (Horel, 2002): the reopening of history research institutes, mostly forbidden during communism, the (re)foundation of Jewish schools and museums, etc.

A third reason for focusing our research on this specific type of property is our interest for the study of actors involved in the elaboration of restitution policies. While the members of the Jewish communities generally try to recover their properties through individual claims, several organizations give expression to the claims regarding the communal properties: local communities, regional and international associations, like the World Jewish Restitution Organization (see Eizenstat, 2004).

However, I must also mention the fact that, despite the obvious distinction between communal and individual property, the confusion between these two types of property/ laws is very recurrent in the public discourse or the daily discourse of my informants. For instance, after the elaboration of the Law no. 501/2002 pertaining to the restitution on religious properties, one of my interviewees bitterly noticed: 'They [the Jews] always had a privileged status. Maybe should I convert to their religion, in order to get my family's house back'.

In the first part of this article, I will briefly trace the 'history' of property expropriation that affected the Jewish Community surrounding World War II (the 'aryanization') and after the instauration and the consolidation of the communist regime (the 'nationalization'). Subsequently, I focus on politics elaborated in Romania for providing compensation or restitution to the Jewish Community for these expropriations. After this review of the historical background and of the post-communist restitution policies, I will explore the 'ethnos'-based (Priiban, 2004) rhetoric of restitution.

'Damn them, they'll cry, but finally they'll shut up...'⁵ –

'Romanianization' and Nationalization of the Jewish Assets

Several waves of expropriation affected both the Jewish community and individuals.

The first laws for the 'Romanianization' of Jewish property were voted in July – August 1940, during the royal dictatorship of Charles the 2nd. The national legionary state continued the 'Aryanization' of the Jewish property between September 1940 and January 1941, in 1941 a National Commission for Romanianization was established within the Ministry for National Economy to manage 'Aryanized' property. The available figures allow one to understand the width of this phenomenon, both at the level of individuals and at the level of the community: until 1943, 75 385 persons⁶ were banished from their apartments; between July 1942 and August 1944, based on the Decree-Law no. 499 /1942, 1 042 buildings belonging to the Jewish communities (temples, synagogues, prayer houses, hospitals, schools, cemeteries, etc.) were confiscated (The Federation of Romanian Jewish Communities. The Centre for the History of Romanian Jews 1993, 344).

After the instauration of the communist regime, like in the case of Czechoslovakia or other countries of Central and Eastern Europe, several normative acts were adopted, which invalidated the process of Aryanization and proclaimed the restitution of 'Romanianized' properties (for instance the Law for the abrogation of anti-Jewish legislative measures, adopted in Romania in December 1944). In fact most of these assets were not effectively restituted. One should mention, however, that a law on heirless and unclaimed Jewish property was passed in 1948⁷. This law allowed the local communities to retrieve all the movable and immovable assets belonging to the deported Jews, in order to be used for helping the poor. But the main beneficiaries of this law were the Federation of Jewish Communities (based in Bucharest) and the Jewish Democratic Committee (an organization founded in 1945 by the communists in an effort to exercise a better control over the Jewish community). The main task of this so-called 'Democratic Committee' was the 'political enlightenment and mobilization [...] of the Mozaic clergy and Mozaic faithful', which means (according to Bercu Feldmann, the Committee's Secretary) 'to increase the Jewish working people's love and attachment for the USSR, to mobilize Jewish working people more actively in the

5 Says 'comrade' Iosif Chisinievski (a Jew himself) during 'The meeting of the Political Bureau of the C.C. – RWP' (Central Committee of the Romanian Working Party) from January 14, 1953 (while the political bureau was discussing the possible abolition of the Jewish committees and organizations). See Rotman (1996, 241).

6 After WWII, some 350 000 Jews still lived in Romania (Rotman 2004, 31; Wasserstein 2000, 6).

7 Decree no. 113/ June 30, 1948 (Decretul no. 113 cu privire la bunurile rămase de pe urma evreilor, victime ale unor măsuri de persecutie, decedati fără mostenitori, in *Colectiune de legi, decrete si deciziuni*, tom XXVI, 1–30 June 1948, pp. 1527 – 1529).

fight for peace⁸. One of the regional commissions (created to make a report on the situation of movable and immovable assets and subsequently to sell all this assets) even noticed that 'the activity of our commission is under the political control of the Jewish Democratic Committee'.⁹ The local Jewish organizations were obliged to sell the recovered goods and to hand over 80% of the profit to the Federation of Jewish Communities¹⁰.

At the end of the 1940s several laws regarding the nationalization of Jewish properties were passed. They were directed especially at the institutional networks for social and medical assistance and the teaching establishments: 1948 – the schools; 1949 – the hospitals, the medical centres, the asylums, the canteens, etc. The education and the social assistance had to be the monopoly of the only existing party, noticed Liviu Rotman (Rotman 1996, 231). A key element of the communist strategy aiming the control and the liquidation of the Jewish communal life, these nationalizations were portrayed by the official propaganda as part of the 'the achievements of the people's democratic regime in assuring religious freedom'¹¹ and 'full equality with Romanian people and the other national minorities'¹²: 'The Romanian Labour Party is guided in his national policies by the Leninist directives, in accordance to which the majority nation has to reveal a particular concern and solicitude towards the national minorities'¹³.

Once the Jewish schools were nationalized, the first schools in Yiddish (subsidized by the state) were founded in Bucharest, Iasi and Timisoara. The main tasks of these schools included educating the members of the Community in a 'healthy spirit'¹⁴ and promoting Yiddish¹⁵ language over Hebrew¹⁶. 'Instead of the Jewish schools

8 Open Society Archives (OSA), 300-60-1, Jews 1957 – 1959, no. 1272/ 28.02.1952 (Meeting of the Jewish Democratic Committee, in *Viata nouă*, 26.02.1952), pages 2–7.

9 Archives of the Federation of Jewish Communities, Bucharest, Fund X (Movable and immovable assets), File 9, 'Report on the activity of the regional commission for the goods of the Federation of Jewish Communities, based in Cluj' (October 1948 – May 1949), 2nd page.

10 See Archives of the Federation of Jewish Communities, Bucharest, Fund X (Movable and immovable assets), especially files 9–11 or Fund VII (Contemporary documents), especially files 15, 23 and 24.

11 OSA, 300-60-1, Jews 1957 – 1959, no. 1272/ 28.02.1952 (Meeting of the Jewish Democratic Committee, in *Viata nouă*, 26.02.1952), 7th page.

12 OSA, 300-60-1, Jews 1957 – 1959 (*Romania. Freedom of religion acknowledged by Jewish official*), 1st page.

13 *Romania libera*, June 7, 1956, OSA, 300-60-1, Private property 1951 – 1969.

14 OSA, 300-60-1, Jews 1957 – 1959, no. 1272/ 28.02.1952 (Meeting of the Jewish Democratic Committee, in *Viata nouă*, 26.02.1952), 6th page.

15 The vernacular language of Jewish communities in Central and Eastern Europe. The status of modern Hebrew as the official language of Israel led to a decline in the use of Yiddish, but also to the promotion of this language (considered to be a 'progressive language') by the communities that rejected Zionism.

16 For the promotion of the Yiddish language over Hebrew, see mainly Hary Kuller, 'Difuzarea idisului între cele doua războaie mondiale si după in Romania', *Buletinul Centrului, muzeului si*

existing during the previous political regimes, which educated the young people in the bourgeois and nationalist spirit, the Yiddish school offers the pupils a real education, rendering them dignified builders of the socialism¹⁷.

Not only the Communities and the Jewish organizations were forced to 'donate' their assets, but also the individuals. Despite the numerous hesitations in the Communist Party's politics on the question of emigration to Israel (Rotman, 1996, 232), more than 280 000 Jews emigrated between 1948 and 1989 (Ioanid, 2005, 203–204) and they were forced to leave their possessions behind. So did the Jews willing to emigrate in Europe or in the US: 'Only those whose family pay a ransom of about 3 – 4 000 USD can leave [the country]. Obviously, they have to leave behind all the things they own, the house, the furniture. [...] In the case of the Jews who have no relatives abroad willing to pay the ransom, there is only one way [...]: they are supposed to make a donation to the State – the house and all their belongings'¹⁸.

The property rights of both the Jewish Community and its members were dramatically curtailed also in the 1980s, because of the aggressive 'systematization of the cities'. The communist regime tried to reshape the cities by means of an aesthetic – political plan. For instance, Dudesti-Vacaresti (a Jewish area in the historical centre of Bucharest, the capital of Romania), was demolished almost completely, because of the architectural ambition of the dictator Nicolae Ceausescu: he wanted to build a ~~dwelling~~ quarter dominated by the so-called 'House of the People' (nowadays the Palace of Parliament, the second largest building in the world after the Pentagon) and centred on the boulevard 'the Victory of Socialism'. More than half of the Jewish prayer houses in Bucharest were demolished between 1985 and 1988¹⁹.

While examining the legal status of the ecclesiastic assets during the communist regime, one should emphasize the fact that, in most of Eastern and Central Europe, the synagogues, as the public space that the Jewish population could still enjoy as a community, tend to become a centre for propaganda of the communist regimes that surfaced after 1945 (for instance a strong *anti-alya*, anti-emigration propaganda), doubled by the tightest political control (Rotman, 2004, 39)²⁰. 'The *Securitate* [secret police] had plenty of informers present when the celebration took place in

arhivei istorice a evreilor din Romania, no. 12/ 2006, 47 – 62.

17 OSA, 300-60-1, Jews 1957 – 1959 (D. Rubin, 'The second class of the pedagogical school in Yiddish', in *Romania libera*, 9 July 1954).

18 OSA, 300 – 60 – 2, Confidential Reports, Radio Free Europe (RFE), 1974 (*Concerning the situation of the Jews in Romania*, 11 February 1974, 5th page).

19 V. The chronological table of synagogues in Bucharest, published by architects Neculai – Ionescu Ghinea and Dan D. Ionescu in 1999 (consisting of some 110 temples/ synagogues/ places of worship built in Bucharest before 1985, of which 65 were demolished between 1985 and 1988), in *The Jews of Romania. History, culture, civilization* (CD edited by the Federation of Jewish Communities in Romania. The Centre for the History of Romanian Jews, Bucharest, 2004).

20 For a history of Jewish communities in other Central European states, see Horel 2002.

the synagogue. [...] everybody in the community knew that it was common practice. On each High Holiday, some unknown people, usually men, came to the synagogue, people we knew weren't part of the community and were there for one purpose alone: to find out if we were talking against the system'.²¹

But in Romania, as opposed to other Eastern and Central European states, the places of worship are affected more by the systematization of the cities in the 1980s than by the nationalization. Generally, the most important synagogues remain the property of the Federation of Jewish Communities (it is the case of the Choral Temple in Bucharest, which functioned both as the centre of religious life and as community headquarters, or that of the 'Holy Union' temple in Bucharest, which was transformed in the Museum of Jewish History in 1977), while the 'donation' to the government of the places of worship occurs mainly in the small cities or in rural areas.

The religious role of the Jewish community was thus (apparently) maintained, even though the archives show 'the falsity of the communist politics of 'freedom of the religious cults' ' (Rotman, 1996, 235): 'The Jewish religious communities [are] the most dangerous. There are spies there. [...] They have about 603 temples, houses for prayers, synagogues. The houses for prayers are capitalist enterprises for espionage. [...] The synagogues reduction may be done and there won't be any complaint from the Jewish working population', considered the members of the political bureau of the party – state in 1953 (The meeting of the Political Bureau of the Central Committee of the Romanian Working Party from January 14, 1953, Rotman, 1996, 239–241).

'Restitution as a Reconstitution of National Identity'²²

Like most of the Central and Eastern European countries, Romania put in place restitution policies after the collapse of the communist regime. However, the legislation concerning the restoration of private property at the beginning of the 1990s in the Central and Eastern European countries privileged certain victims (those of the majority population), while excluding the compensation of minorities (notably two important ethnic minorities ~~of Eastern and Central Europe~~, the Germans and the Jews), the non-citizens (emigrants who had lost or renounced their citizenship) and the non-residents (citizens of a state who reside abroad). 'The underlying moral economy framed a region-wide rhetoric of restitution as a reconstitution of national identity' (Barkan 2000, 122). 'The minorities, such as the expatriates, were often part of the agenda to keep all types of 'others' out' (Barkan, 2000, 128).

21 Centropa, Interview with Edita Adler, Romania (2003), Interviewer Andreea Laptés, <<http://www.centropa.org/archive.asp?mode=bio&DB=HIST&fn=Edita&ln=Adler&country=Romania>>, accessed 23 June 2006.

22 Barkan, 2000, 128.

By analyzing these policies in post-communist Romania, I aim to give an answer to the second question that I had asked at the outset – regarding the possibility / the impossibility of adding an ‘ethnic’ interpretation to the restitution laws (in terms of ‘citizenship’ and in terms of the ‘(re)construction of the nation’ by the post-socialist authorities).

In Romania, the process of restitution for the Jewish communitarian properties ‘Romanianized’ during the Antonescu regime or nationalized by the communist regime was set in place after 1997, the date when the first normative acts (four emergency ordinances and a decision) of restitution appeared²³. These normative acts allowed the restitution of a very limited number of communal and organizational Jewish assets (such as the Jewish Theatre, some of the former hospitals, etc).

The first important law pertaining to the restitution of communal property was approved by the parliament in June 2002²⁴. The law concerns buildings that belonged to the religious denominations (such as schools and hospitals), which were nationalized between March, 1945 and December, 1989. This legal cut-off is considered by the members of Jewish Community prejudicial and exclusionary²⁵, because it excludes the period between 1940 and 1945, when a considerable number of property was seized. Moreover, the legal framework enacted separate statutes for different categories of property (religious vs. nonreligious, movable vs. immovable, etc).

If/ when the communal properties were restituted to the communities, they constituted ‘mixed blessings’, as Ruth Gruber notices (Gruber, 2002, 115). For instance, even though the Jewish Theatre was among the first buildings to be restituted to the Community (in 1997), even today²⁶ they didn’t regain the possession of the building simply because the restoration and the maintenance represent major costs.

Three main types of actors are involved in this process of restitution of the communitarian assets, both in the elaboration and in the implementation of the restitution policies in Central and Eastern Europe:

- the local communities (in Romania, the Federation of Jewish Communities, based in Bucharest and different local representatives of this Federation) ;

23 The restitution of Jewish communitarian assets is regulated especially through the Emergency Ordinance (EO) no. 21/1997, modified by EO no. 101/2000; ~~OU~~ no. 112/1998; ~~OU~~ no. 83/1999; the Governmental Decision no. 1334/2000, the Laws no. 501/2002 and no. 66/2004.

24 For a short overview of the property restitution legislation in Central and Eastern European Countries, especially the restitution concerning the religious and communal assets, see Randolph Bell, ‘Summary of Property Restitution in CEE’, submitted to the U.S. Commission on Security and Cooperation in Europe (September, 2003), <http://www.state.gov/p/eur/rls/or/2003/31415.htm>

25 Interview with G.R., juriconsult of the Jewish Community, May 2005, Bucharest.

26 In May 2005, when an interview with ~~R.G.~~, one of the employees of the ‘Caritatea’ Foundation took place.

- the international Jewish agencies, among which the most important is the World Jewish Restitution Organization (WJRO), based in New York and Jerusalem, created in 1992 by the World Jewish Congress and the government of Israel in order to represent the interests of Jews worldwide in the recovery of the Jewish assets after the fall of communism;
- and the foundations and associations constituted after 1989 at the regional or local level in order to defend the rights of the Jewish owners (the WJRO created an entire network of local and regional organizations, often in collaboration with the local Jewish communities).

In an autobiographical writing, Stuart Eizenstat, former 'extraordinary ambassador of the American State Department to Eastern Europe on a mission to encourage the restitution of assets confiscated from the religious communities by the Nazis and then nationalized by the communist governments' between 1995 and 2001 (Eizenstat, 2004), speaks about the relationships established between these three types of actors which vary greatly from one country to the next – going from collaboration to ~~confrontation~~. The conflict, if it exists at all, turns around two questions: who might be the legitimate heirs of the decimated Jewish communities – only the narrow group of survivors or the WJRO, which claims to represent the interests of Jews worldwide? And which organization should manage the restituted goods? (see especially 42, 53). I won't address in this chapter the complex issue of the relationship between the local/ national/ regional/ and international actors and their participation in the decision-making process or in the implementation of the restitution laws. I would only mention the fact that in the case of Romania it is the 'Caritatea' foundation ('Charity'), created by the WJRO in 1997, which has exclusive rights to the communitarian assets that were restituted after 1997 (although – never forsaking its right to ownership – the Foundation conceded the right to use to the Federation of the Jewish Communities). In fact, the right of ownership belongs to the local antenna of the WJRO for very practical reasons – according to the representatives of the Jewish Community and of the Foundation (the local community, very limited as it is²⁷, could not afford to take in charge the expenses for the restoration of the assets affected by restitution).

As for the property belonging to individual members of the Jewish community, Romania, like most of the CEECs, restricted initially restitution to current citizens. Because many of the former owners emigrated during the communist regime, they became ineligible to receive property, unless they regained the Romanian citizenship.

The President of Romania promulgated in 1995 the first important law for (quasi)restitution: the Law no. 112 for the regulation of the situation of certain immovable goods that became state property. This law met strong critiques. Even if it recognized the former owner's right of reclaiming his or her property, the law stipu-

27 6 057 members, according to the 2002 census data.

lated that an owner could claim only one building, and this upon the double condition that he had formerly lived there or the building was not occupied at the moment (thus, the number of possible property reconstructions was lowered). The Law no. 112 dealt more with 'the protection of the current inhabitants', who had the right to buy the buildings they had lived in at very low prices (Zerilli, 1998, 166). The leader of The Tenants of the Nationalized Buildings' Association thus considers the two laws in question to be 'an act of benevolence from the State's leaders [...] because the prices of those flats were reduced to almost nothing by the increasing inflation, after which the value of a house became, in a few years, comparable with the one of a TV.'²⁸ Apart from recreating the presocialist property, this law created new rights / new owners (the former tenants living in nationalized buildings) and excluded from restitution the non-citizens and the non-residents.

A close examination of the legislative framework (from the first 'restitution law' until the most recent one, initiated by the 'Justice and Truth' political coalition and built around the principle of *restitutio in integrum* – restoration to original condition –, L247/2005), allows us to observe that the laws that have been drafted in the field of restitution, as well as the associated jurisprudence, lack consistency and often constitute the object of dispute and negotiations both among and within the various political parties.

The rhetoric of the 'people' and the 'nation' was particularly approached during these political negotiations. While generally the members of the National Peasant Christian Democratic Party or of the Liberal Party have tried to put the restitution (including the properties belonging to religious and ethnic communities) on the political agenda, the most vigorous opponents were the members of the ultranationalist Greater Romania Party (Otoiu, 2004; Stan, 2006). They argue that this retroactive, reparatory justice (giving back the properties to the former owners) will in fact institute injustice, because of the displacement of the tenants living in nationalized houses. As a consequence, only a general 'redistribution' of land and housing would really 'deliver justice'. Their arguments are also built around the idea of 'Romanianess': they claim that the government should have implemented in Romania an 'ethnos'-based (Pribean, 2004) restitution policy. 'A country is a living organism. If we cut it into pieces, in concert with the foreigners, we will offend God... We already have offended God...' (says Leonida Lari, member of the Greater Romania Party, during the parliamentary debates around the restitution laws, 24th of June 1997). But also the representatives of the Social Democrats favour greatly the idea of a 'redistributive' justice and of a limited restitution: 'It is worth despoiling those who are today living in poverty?', asks Ion Iliescu, former Romanian president²⁹; and he concludes that, due to the country's

28 E.P., interview, April 26th, 2004, Bucharest.

29 Interview with Ion Iliescu, in 'Ha'aretz', 25th of July 2003, <<http://www.haaretz.com/>>.

bad economic situation, 'the Jewish property restoration requests should be either postponed or rejected'. Not only the prohibitive cost of restitution could explain, in Social Democrat's view, the 'necessity' of 'postponing' the restitution belonging to ethnic and religious communities, but also what they consider to be 'the possible dangerous consequences on inter-confessional and inter-ethnic relationships in Transylvania'.³⁰

Conclusions

The literature on the restoration of the private property in Central and Eastern Europe proposes a double interpretation of the changes that occurred within the property regime. The first account stresses the features of continuity with pre-communist period and observes the fact that the events of 1980s were often experienced as a return to 'normality', as a *nachholende Revolution* (to use Habermas' terms). Like other countries of Central and Eastern Europe, post-communist Romania considered the interwar period as an essential point of reference: ideological or simply historical, this perspective forces the post-communist Romania, to a certain extent, to give itself a definition which bypasses the interwar period (Preda, 2002, 570). This rectifying revolution could also express itself in the elaboration of the 'public policies of past' (e.g. the restoration of the properties). In the various analyses dedicated to the way in which the post-communist countries 'broke loose' from the communist past through legislation intended to condemn its abuses, what dominates this field is an approach called 'transitional justice'. This perspective uses concepts and theories which were elaborated by the political and historic sciences in Germany (*Vergangenheitspolitik*) and in the Anglo-Saxon universities (Transitional Justice) (e.g. Kritiz, 1995). It underlines the fact that the political ideas, combined with the notions of 'justice' and 'injustice', guide the elaboration and the implementation of 'the policies of the past' (e.g. *East European Politics and Societies*, 19: 3/2005).

The second possible interpretation underlines the continuity between both regimes (communist and post-communist) of property and conceives the process of (re)creation of private property as being marked by 'the collectivist inheritance'. The post-communist regime of property would only be 'the completion of a process of appropriation opened in the communist period by the members of nomenklatura' (CeFRes, 1997, 16), which would mark the creation of 'capitalism with a comrade's face' (Frydman *et al*, 1996, 5–11).

I aim neither to confirm nor to counter the hypothesis of a transmutation of the cultural and political capital into economic capital through the process of

30 Censure motion, initiated by the members of the Social Democratic Party, 16th of June 2005, Romanian Parliament, <www.cdep.ro>

(re)emergence of the private property in Romania after 1989 (Chelcea, 2000). Nevertheless, I have noticed that at the beginning of 1990s the constitution of property was privileged to the detriment of its reconstruction, and 'redistributive justice' was preferred to the retroactive, reparatory 'justice'.

A final remark regards the possibility of using the case study of the Jewish community holdings as a sort of 'privileged observatory', which would allow us to highlight the meaning of the notions of 'citizen' and 'nation' in the legislation of restoration. The legislation of 'quasi-restoration' elaborated upon at the beginning of 1990s (especially until 1997) gives us the image of a right of property, which can be understood in an ethnic perspective. These 'Romanian people', whose civil rights, including the right of property, are re-defined, and whose heritage of the former Party State³¹ is restored, 'represent [...] an organic nation, by the ethnic understanding of citizenship' (Barbu, 2001, 23).

The case of the Jewish community possessions could constitute a 'privileged observatory', but at the same time, this is not inevitably 'typical' for the problem of the minorities' ownership, or for the property of all ethnic or religious communities in post-communist Romania. If we refer to the restoration of ecclesiastical possessions, even today a controversial question is posed by the assets and specifically by the places of the worship of the Greek Roman Catholic Church (Romanian Church United with Rome) and of the Reformed Church³². Obviously, to understand these controversies, one must underline the fact that not all the 'religious minorities' have had a similar 'recent past'. During the communist regime, the Greek Catholic Church was forced to 'unite' with the Orthodox Church in 1948 (Ionescu-Gura, 2005, 411–420; Vasile, 2003) and, as a consequence of this 're-unification', its patrimony was nationalized and used by the Orthodox Church (Iordachi, 1999; Mahieu, 2004). After 1989, the re-establishment of the Greek Catholic Church led to open and endless controversies with representatives of the Orthodox Church over the restitution of the patrimony confiscated in 1948. Also in this case, the 'structure of property rights [...] had a long afterlife in the course of dismantling socialism' (Verdery, 2003, xiv)...

31 Decree no. 30/ 18 January 1990, M.O., No. 12/19 January 1990 (Art. 1 : 'All the patrimony of the former Romanian Communist Party will pass to the State, and will be considered goods belonging to the entire people ').

32 V. Doc. 7795 – the report of the Commission on Legal Issues and Human Rights (Parliamentary Assembly of the Council of Europe), rapporteur: Gunnar Jansson (above all chapters C and D, 'Goods belonging to the Minorities and Communities', and 'Ecclesiastical Goods', respectively) as well as Resolution 1123 (1997) on the respect of international obligations and commitments made by Romania (text adopted by the Assembly on the 24th of April, 1997).

References

- Andrusz, G., Harloe, M. and Szelenyi, I. (1996), *Cities after Socialism* (Oxford: Blackwell Publishers).
- Barbu, D. (2001), 'De l'ignorance invincible dans la démocratie. Réflexions sur la transformation post-communiste', *Studia Politica. Romanian Political Science Review*, 1:1.
- (2005), *Politica pentru barbari* [Politics for barbarians] (Bucharest: Nemira).
- Barkan, E. (2000), *The guilt of nations. Restitution and negotiating historical injustices* (New York and London: W.W. Norton and Co.).
- Bönker, F., Offe, C. and PREUSS, U. K (1993), *Efficiency and justice of property restitution in East Europe*, ZERP Diskussionspapier 6/93, Papers on Constitution Building No. 5, Center for European Law and Policy, Bremen University.
- Borneman, J. (1997), *Settling accounts: violence, justice and accountability in postsocialist Europe* (Princeton University Press).
- CeFRes (1997), 'Anciens et nouveaux propriétaires. Stratégies d'appropriation en Europe centrale et orientale', *Cahiers du CeFRes*, No. 11f.
- Chelcea, L. (2000), *Gentrification, Property Rights and Post-socialist Private Accumulation (Bucharest, Romania)*, Institute for Human Sciences, Wien, SOCO Project Paper, No. 93/2000.
- Dobry, Michel (2000), Les voies incertaines de la transitologie: choix stratégiques, séquences historiques, bifurcation et processus de path dependence, in: *Revue Française de Science Politique* (vol. 50), No. 1, 585 – 614.
- East European Politics and Societies* (2005), 19:3 ('The role of ideas in post-communist politics: a reevaluation'), pp. 339–493.
- Eizenstat, S. E. (2004), *Une justice tardive. Spoliations et travail forcé, un bilan final de la Seconde Guerre mondiale* [Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II] (Paris: Seuil).
- Federația Comunităților Evreiești din România. Centrul pentru Studiul Istoriei Evreilor din România [The Federation of Romanian Jewish Communities. The Centre for the History of Romanian Jews] (1993), *Evreii din România între anii 1940 – 1944* [The Jews of Romania between 1940 – 1944], vol. I, *Legislația antievreiască* [Anti-Jewish Legislation] (Bucharest: Hasefer).
- Frydman, R., Murphy, K. and Rapaczynski, A. (1996), 'Capitalism with a Comrade's Face', *Transition*, 2:2, pp. 5–11.
- Gruber, R. E. (2002), *Virtually Jewish. Reinventing Jewish Culture in Europe* (Berkeley/ Los Angeles/ London: University of California Press).
- Henry, M. (1997), *The restitution of Jewish property in Central and Eastern Europe*, New York, American Jewish Committee.

- Horel, C. (2002), *La restitution des biens juifs et le renouveau juif en Europe centrale – Hongrie, Slovaquie, République Thèque* (Bern: Peter Lang).
- Ioanid, R. (2005), *Răscumpărarea evreilor. Istoria acordurilor secrete dintre România și Israel* [The Ransom of Jews. The Story of the Extraordinary Secret Bargain between Romania and Israel], (Iasi: Polirom).
- Ionescu-Gură, N. (2005), *Stalinizarea României. Republica Populară Română 1948 – 1950: transformări instituționale* [The Stalinization of Romania. The Romanian Popular Republic 1948 – 1950: Institutional Transformations] (Bucharest: BIC ALL).
- Iordachi, C. (1999), 'Politics and Inter-Confessional Strife in post-1989 Romania: From Competition for Resources to the Redefinition of National Ideology', *Balkanologie*, 3:1, pp. 147–169.
- Karn, A. (2000), *Restitution and Retrodiction. Talking Back to the Past in Postcommunist East – Central Europe* Working Paper, EU Center of California, 03/2000.
- Kornai, J. (1990), *The Road to a Free Economy. Shifting from a Socialist System: The Example of Hungary* (New York: W. W. Norton and Budapest: HVG Kiadó).
- Kozminski, Andrzej K. (1997), 'Restitution of Private Property and Reprivatisation in Central and East Europe', *Communist and Postcommunist Studies*, 30:1, pp. 5–22.
- Kritz, N.J. (ed.) (1995), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vol. I General Considerations, Vol. II Country Studies, Vol. III Laws, Rulings, and Reports (Washington: U.S. Institute of Peace Press).
- Linz, J. and Stepan, A. (1997), *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Postcommunist Europe* (Baltimore, University of Baltimore Press).
- Mahieu, S. (2004), *Legal Recognition and Recovery of Property: Contested restitution of the Romanian Greek Catholic Church Patrimony*, Max Planck Institute for Social Anthropology Working Papers, no. 69/2004.
- McAdams, J. A. (ed.) (1997), *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame: Notre Dame University Press).
- Offe, C. (1997), *Varieties of Transition: The East European and East German Experience*, (Cambridge, Massachusetts: MIT Press).
- Otoiu, D. (2004), 'Mémoire du communisme, acteurs du postcommunisme. Les associations des propriétaires et des locataires des immeubles nationalisés', *Studia Politica. Romanian Political Science Review*, 4 :4, pp. 885–918
- Preda, C. (2002), 'Système politique et familles partisans en Roumanie postcommuniste', *Studia Politica. Romanian Political Science Review*, 2:2.
- Priban, J. (2004), 'Reconstituting Paradise Lost: Temporality, Civility, and Ethnicity in Post-Communist Constitution-Making', *Law & Society Review*, 38:3, pp. 407–432.

- Pogany, I.S. (1998 a), *Righting Wrongs in Eastern Europe* (Palgrave Macmillan).
- (1998 b), 'The Restitution of Former Jewish Owned Property and Related Schemes of Compensation in Hungary', *European Public Law*, 4:2, pp. 211–232.
- Rotman, L. (1996), 'The politics of the Communist regime concerning the Jews: Contradictions, ambivalence and misunderstanding (1945 – 1953)', in Stanciu, I., (ed.), *The Jews in the Romanian History. Papers from the International Symposium* (Bucharest, 1996), Institute of History 'N. Iorga', Romanian Academy & The Goldstein – Goren Center, Diaspora Research Institute, Tel Aviv University (Bucharest: Silex, f.a.), pp. 230 – 247.
- (2004), *Evreii din România în perioada comunistă. 1944 – 1965* [The Romanian Jews during the Communist Era. 1944 – 1965] (Iași: Polirom).
- Stan, L. (2006), 'The Roof over Our Head: Property Restitution in Romania', *Journal of Communist Studies and Transition Politics*, 22:4, pp. 1–26.
- Vasile, C. (2003), *Între Vatican și Kremlin. Biserica greco-catolică în timpul regimului comunist* [Between the Vatican and the Kremlin. The Greek Catholic Church during the Communist Regime] (Bucharest: Curtea Veche).
- Verdery, K. (1996), *What was Socialism and what comes next?* (Princeton: Princeton University Press).
- (2003), *The Vanishing Hectare, Property and Value in Postsocialist Transylvania*, (Ithaca and London: Cornell University Press).
- Wasserstein, B. (2000), *Dispariția diasporei. Evreii din Europa începând cu 1945* [Vanishing Diaspora. The Jews in Europe since 1945] (Iași: Polirom).
- Zerilli, F. (1998), 'Identité et propriété en milieu urbain. Locataires et propriétaires dans la Roumanie contemporaine', *Yearbook of the Romanian Society of Cultural Anthropology*, vol. 1.